

Designation Run Report

Gray, John - Plaintiffs' Submission

Gray, John 07-30-2020

Plaintiffs Affirmative Designations 03:30:34

Defense Completeness Counters 00:03:47

Plaintiffs Counter Counters 00:00:40

Total Time 03:35:01



Page/Line

Source

ID

19:6 - 20:23

Gray, John 07-30-2020 (00:01:27)

JG02.1

19:6 Q. Good morning, Mr. Gray. My
19:7 name is Eric Kennedy. I represent the
19:8 plaintiffs, various cities and counties
19:9 across the country, most specifically, Cabell
19:10 County in West Virginia and the City of
19:11 Huntington in West Virginia.
19:12 Could you please state your
19:13 full name for the record, sir?
19:14 A. John Mitchell Gray, G-R-A-Y.
19:15 Q. And you are the former
19:16 president and CEO of the HDA; would that be
19:17 correct?
19:18 A. That is correct.
19:19 Q. And can you tell us, what does
19:20 the HDA stand for, what does that stand for?
19:21 A. Healthcare Distribution
19:22 Alliance.
19:23 Q. The HDA was formally known as
19:24 the HDMA; is that true?
19:25 A. Correct.
20:1 Q. And can you tell us what HDMA
20:2 stood for?
20:3 A. Healthcare Distribution
20:4 Management Association.
20:5 Q. In the course of my
20:6 questioning, if I reference HDA or I talk
20:7 about HDMA, you'll understand we are talking
20:8 about the same thing?
20:9 A. Right, right. Same thing.
20:10 Q. When did you become the
20:11 president and CEO of the HDA?
20:12 A. April 2004.
20:13 Q. And how long were you the
20:14 president?
20:15 A. Until May of 2020.
20:16 Q. You are a lawyer?
20:17 A. Correct.
20:18 Q. You have a master's of business
20:19 in addition to that?

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
	20:20 A. Correct.	
	20:21 Q. And can you tell me how many	
	20:22 lawyers from the HDA are here participating	
	20:23 in this proceeding today? Do you know?	
21:8 - 21:16	Gray, John 07-30-2020 (00:00:14)	JG02.2
	21:8 A. Just Liz Gallenagh.	
	21:9 BY MR. KENNEDY:	
	21:10 Q. And outside attorneys	
	21:11 representing you today would be	
	21:12 Mr. Weinstein; is that correct?	
	21:13 A. Correct.	
	21:14 Q. And did you meet with them in	
	21:15 preparation for your deposition?	
	21:16 A. We did.	
21:22 - 22:23	Gray, John 07-30-2020 (00:01:01)	JG02.3
	21:22 Q. Now, the HDA or the HDMA is the	
	21:23 industry trade organization for primary	
	21:24 distributors; would that be accurate, sir?	
	21:25 A. Primary, yes.	
	22:1 Q. And the HDA is funded by its	
	22:2 members?	
	22:3 A. Both manufacturers and	
	22:4 distributors.	
	22:5 Q. Members, correct?	
	22:6 A. Correct.	
	22:7 Q. And the mission and the	
	22:8 priorities of the HDA would be driven by its	
	22:9 members, true?	
	22:10 A. Correct.	
	22:11 Q. Cardinal, McKesson,	
	22:12 AmerisourceBergen are members?	
	22:13 A. They are.	
	22:14 Q. And if I look at the documents,	
	22:15 I hear often in this litigation, they are	
	22:16 often referred to as the Big Three. Are you	
	22:17 familiar with that reference?	
	22:18 A. It's an industrywide	
	22:19 expression.	
	22:20 Q. And they are called the Big	
	22:21 Three because collectively, individually,	

Page/Line

Source

ID

23:2 - 23:15

22:22 they are the three largest distributors of
22:23 opioids into the American communities.

Gray, John 07-30-2020 (00:00:26)

JG02.4

23:2 A. No, that's not accurate.

23:3 BY MR. KENNEDY:

23:4 Q. They're not the three largest
23:5 distributors of opioids?

23:6 A. I don't know about the opioids,
23:7 but they're the three largest distributors of
23:8 all pharmaceuticals in the United States.

23:9 Q. And do you understand, sir,
23:10 that they distribute -- by the mid teens, by
23:11 2014, '15, '16, they probably distributed
23:12 close to 90% of the opioids into this
23:13 country.

23:14 Do you understand that to be
23:15 true?

23:18 - 24:14

Gray, John 07-30-2020 (00:00:45)

JG02.5

23:18 A. Yeah, I've read that in the
23:19 media accounts.

23:20 BY MR. KENNEDY:

23:21 Q. Now, the HDA and the HDMA has
23:22 an executive committee, does it not?

23:23 A. It does.

23:24 Q. A seven-person, seven-member
23:25 executive committee?

24:1 A. That's correct.

24:2 Q. And McKesson, Cardinal,
24:3 AmerisourceBergen each have a guaranteed
24:4 position on the executive committee based
24:5 upon their financial contribution share; is
24:6 that true?

24:7 A. No, not that I'm aware of.

24:8 When I came on board they had permanent
24:9 seats, and the decision behind that was
24:10 before me. I don't know what the metric, if
24:11 there was one at all.

24:12 Q. They have permanent
24:13 positions on --

24:14 A. They have permanent seats.

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
24:22 - 25:11	Gray, John 07-30-2020 (00:00:28) 24:22 Q. Only distributors sit on the 24:23 executive committee, true? 24:24 A. Only distributors. 24:25 Q. And McKesson, Cardinal and 25:1 AmerisourceBergen have permanent positions on 25:2 the executive committee? 25:3 A. That's correct. 25:4 Q. Now, the executive committee, 25:5 can we agree, is the primary decision-maker 25:6 at the HDMA or the HDA? 25:7 A. For certain things. 25:8 Q. Well, they approve 25:9 expenditures, do they not? 25:10 A. They run -- they approve the 25:11 budget.	JG02.6
26:12 - 26:19	Gray, John 07-30-2020 (00:00:17) 26:12 Q. The executive committee 26:13 determined your salary, did they not? 26:14 A. They do. It's part of the 26:15 budget. 26:16 Q. Let's -- I'm going to pull 26:17 Exhibit 64 if we could, just so we can better 26:18 understand the authority of the executive 26:19 committee.	JG02.7
27:2 - 28:5	Gray, John 07-30-2020 (00:00:54) 27:2 Q. Exhibit 64 -- do you see the 27:3 top of that? This says Healthcare 27:4 Distribution Management Association Bylaws. 27:5 Do you see that? 27:6 A. Yeah, I do. 27:7 Q. And I think this is for 2011, 27:8 right? 27:9 A. I don't know. I don't see a 27:10 date on it. 27:11 Q. Well, go to page Bates 27:12 number 519, if you would. 27:13 A. Oh. 27:14 Q. That's the last page, 519. 27:15 A. Okay.	JG02.8

Page/Line

Source

ID

27:16 Q. Do you see that, updated

27:17 June 5, 2011?

27:18 A. Okay. That's the date on the

27:19 back, okay.

27:20 Q. You're familiar with the bylaws

27:21 of the organization that you were the

27:22 president and the CEO of, true?

27:23 A. Uh-huh, correct.

27:24 Q. Go to page 7.

27:25 A. Okay.

28:1 Q. The board only met twice a

28:2 year, correct?

28:3 A. The board met twice a year.

28:4 Q. So go to -- I'm sorry --

28:5 page 12, the Bates 512.

28:14 - 30:22

Gray, John 07-30-2020 (00:02:19)

JG02.9

28:14 Q. You see the section Executive

28:15 Committee?

28:16 A. Correct.

28:17 Q. Go down to (c).

28:18 A. Uh-huh.

28:19 Q. Does (c) state: Except as

28:20 provided in Article V, Section 5; Article VI,

28:21 Section 4; Article VIII, Section 3,

28:22 et cetera, et cetera; or otherwise provided

28:23 by resolution of the Board of Directors, in

28:24 the interim between meetings of the Board of

28:25 Directors, the Executive Committee shall

29:1 possess all of the powers and the authority

29:2 of the Board.

29:3 Did I read that right?

29:4 A. That is correct.

29:5 Q. Subject only to subsequent

29:6 reporting of its action to the Board of

29:7 Directors at the latter's next meeting.

29:8 Correct?

29:9 A. That's right.

29:10 Q. The board meets twice a year,

29:11 every six months, true?

29:12 A. It met in June and October.

Page/Line

Source

ID

29:13 Q. To continue, your bylaws state:
 29:14 Such power -- again, we're talking about the
 29:15 board of the executive committee. Such power
 29:16 and authority shall include, but not be
 29:17 limited to, approval of the annual budget of
 29:18 the association, setting the terms and
 29:19 conditions of the employment of the president
 29:20 and CEO.
 29:21 And that was you, correct?
 29:22 A. Correct.
 29:23 Q. Including hiring and retention?
 29:24 A. Right.
 29:25 Q. And the execution of the
 30:1 priorities, policies and positions of the
 30:2 association as identified and developed by
 30:3 the board of directors.
 30:4 A. Correct.
 30:5 Q. That was the power of the
 30:6 executive committee, correct?
 30:7 A. Correct.
 30:8 Q. And Cardinal, McKesson and
 30:9 AmerisourceBergen all held permanent
 30:10 positions on the executive committee, true?
 30:11 A. That's correct.
 30:12 Q. Let's talk about money.
 30:13 McKesson, Cardinal and AmerisourceBergen each
 30:14 paid over \$1 million a year in dues to the
 30:15 HDA, true?
 30:16 A. Beginning -- whew. That didn't
 30:17 begin until 2000 and -- possibly 2007, 2008.
 30:18 Q. So from 2008 on, with some
 30:19 annual increases, each of the Big Three was
 30:20 paying in in dues over a million dollars a
 30:21 year, true?
 30:22 A. True.

31:16 - 33:24

Gray, John 07-30-2020 (00:02:37)

JG02.292

31:16 Q. The Big Three contributed to
 31:17 the political action committee, did they not,
 31:18 of the HDA?
 31:19 A. They did. They did.

31:20 Q. In addition to that, they also
 31:21 would fund special projects that you folks
 31:22 carried out at the HDA, would they not?
 31:23 A. I don't recall any particular
 31:24 study they or any one of them funded the
 31:25 entirety of it. There might have been other
 32:1 companies involved.
 32:2 Q. Let me use an example. You
 32:3 know the Reservoir PR firm, do you not, sir?
 32:4 A. Correct.
 32:5 Q. They came on board in 2016 to
 32:6 help the HDA with public relations, and we'll
 32:7 talk about that in some detail, but they came
 32:8 on in 2016. And do you recall that the Big
 32:9 Three, McKesson, Cardinal and
 32:10 AmerisourceBergen, each funded the hiring of
 32:11 that PR firm to the tune of over \$1.2 million
 32:12 each?
 32:13 Do you remember that, sir?
 32:14 A. And all the individual members
 32:15 paid assessments relative to the sizes of
 32:16 their companies, yes.
 32:17 Q. Absolutely, sir.
 32:18 The Big Three each paid over
 32:19 a million dollars, and the next-closest
 32:20 contribution among your members was \$50,000,
 32:21 20 times less than the Big Three. Do you
 32:22 recall that, sir?
 32:23 A. Not -- not that number, I do
 32:24 not.
 32:25 Q. Can we agree, sir, without the
 33:1 money of the Big Three, the HDMA would not
 33:2 exist in its present form, true?
 33:3 A. Well, I don't believe you can
 33:4 say that's absolutely true.
 33:5 Q. All right. Can we agree that
 33:6 you certainly wouldn't make your current
 33:7 budget or your budget in 2019 or '18 or '17
 33:8 or '15, you never would make those budgets
 33:9 without the money of the Big Three, true?

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
	33:10 A. Again, I would say not 33:11 necessarily. 33:12 Q. It was 40% of your budget, 33:13 right? 33:14 A. At the time, but that was based 33:15 on the relative relationship of the other 33:16 members, including the manufacturers. 33:17 Q. Sir, in addition -- let's kind 33:18 of hone down to what the HDA is all about. 33:19 In addition to you representing the 33:20 priorities of your members, with respect to 33:21 the Big Three, McKesson, Cardinal, 33:22 AmerisourceBergen, the Big Three used the HDA 33:23 to do and to say what they couldn't or 33:24 wouldn't do and say, correct?	
34:4 - 34:7	Gray, John 07-30-2020 (00:00:09) 34:4 A. I -- it's not correct. 34:5 Q. All right. Let me -- let's 34:6 look at something. I'm going to look at -- 34:7 pull out Exhibit 52, if you would, sir.	JG02.11
34:14 - 34:16	Gray, John 07-30-2020 (00:00:08) 34:14 Q. This is an e-mail. Take a look 34:15 at the top, the "from" and the "to" and the 34:16 attachments. This is an e-mail --	JG02.12
34:20 - 34:22	Gray, John 07-30-2020 (00:00:03) 34:20 THE WITNESS: Yeah, I've not 34:21 seen this. Obviously, I don't know 34:22 this one.	JG02.13
36:12 - 37:18	Gray, John 07-30-2020 (00:00:56) 36:12 MR. KENNEDY: Are we ready? 36:13 THE WITNESS: Go ahead. 36:14 BY MR. KENNEDY: 36:15 Q. All right. Mr. Gray, you see 36:16 that this is an e-mail from Gabriel 36:17 Weissman -- 36:18 A. Uh-huh. 36:19 Q. -- at AmerisourceBergen. 36:20 Do you see that at the top? 36:21 A. I do. 36:22 Q. Do you know Gabriel Weissman?	JG02.14

Page/Line	Source	ID
	36:23 A. Just in passing.	
	36:24 Q. This is from January of 2018.	
	36:25 Do you see that?	
	37:1 A. Right.	
	37:2 Q. It's to another person from	
	37:3 AmerisourceBergen?	
	37:4 A. Correct.	
	37:5 Q. And the subject, background on	
	37:6 Washington Post letter. There's a review of	
	37:7 a letter that you were sending to the	
	37:8 Washington Post to complain about their	
	37:9 reporting of the opioid distributors.	
	37:10 Do you remember that letter,	
	37:11 sir?	
	37:12 A. Correct.	
	37:13 Q. And the letter is attached, and	
	37:14 Mr. Gabriel has reviewed the letter as a	
	37:15 member of the executive committee. So as a	
	37:16 member of the executive committee, he's	
	37:17 reviewing your letter you sent to the	
	37:18 Washington Post, right?	
37:19 - 38:4	Gray, John 07-30-2020 (00:00:22)	JG02.291
	37:19 A. The letter isn't attached. I	
	37:20 don't have the letter.	
	37:21 Q. Now, let's look at the first	
	37:22 paragraph. If we can go down to the third	
	37:23 line of the sentence that starts with "A	
	37:24 draft of the letter is attached," all right?	
	37:25 You see that? A draft of the letter is	
	38:1 attached.	
	38:2 A. It isn't. It isn't, but okay.	
	38:3 Q. You see that?	
	38:4 A. I see it.	
38:7 - 38:22	Gray, John 07-30-2020 (00:00:44)	JG02.15
	38:7 THE WITNESS: Yep.	
	38:8 BY MR. KENNEDY:	
	38:9 Q. Mr. Weissman from	
	38:10 AmerisourceBergen, after reviewing the letter	
	38:11 to the Washington Post that you are sending,	
	38:12 he states: A draft of the letter is	

Page/Line

Source

ID

38:13 attached. I've provided some high-level
 38:14 feedback, but intentionally tried to avoid
 38:15 line editing of HDA materials as I believe
 38:16 the strength of a trade association on topics
 38:17 like this is that they are able to say the
 38:18 things we can't/won't, and I typically try
 38:19 not to put us in a position to, quote, "sign
 38:20 off" on the more aggressive materials.
 38:21 That was his statement.

38:22 A. Okay.

39:14 - 39:21

Gray, John 07-30-2020 (00:00:18)

JG02.16

39:14 Q. Let's start over. What
 39:15 AmerisourceBergen is saying here is they want
 39:16 to be able to direct what the HDA does, they
 39:17 want to be able to review such things like
 39:18 this letter, and then they want to be able to
 39:19 deny any involvement.
 39:20 That's what he's getting at,
 39:21 correct?

39:24 - 40:20

Gray, John 07-30-2020 (00:01:00)

JG02.17

39:24 A. No, that's not correct. That
 39:25 is a complete misunderstanding of the role of
 40:1 any trade association in Washington, D.C.
 40:2 representing any industry. And that is not
 40:3 the main motivation behind any of this, but
 40:4 that is, generally speaking, a function of
 40:5 the trade association is to be the voice of
 40:6 all its members, and whether I'm in, you
 40:7 know, pharma, National Restaurant
 40:8 Association, AARP or whatever, and this is --
 40:9 this is merely a statement basically of
 40:10 common practice in Washington trade
 40:11 organizations, and it's not that one company
 40:12 weighs in more than another.
 40:13 BY MR. KENNEDY:
 40:14 Q. So what you mean is the common
 40:15 practice there in Washington, D.C. where
 40:16 you're sitting today is, quote, as he says,
 40:17 "the strength of a trade association on
 40:18 topics like this is that they are able to say

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
40:23 - 40:23	40:19 the things we can't and won't." That's your 40:20 strength, sir? Gray, John 07-30-2020 (00:00:00)	JG02.18
40:24 - 41:2	40:23 A. Yeah. Gray, John 07-30-2020 (00:00:11) 40:24 BY MR. KENNEDY: 40:25 Q. Okay. And McKesson and 41:1 Cardinal, along with AmerisourceBergen, 41:2 recognized that strength, did they not, sir?	JG02.19
41:5 - 43:19	Gray, John 07-30-2020 (00:02:53) 41:5 A. Whether they did or didn't, I 41:6 really never spoke to them about it. I don't 41:7 know. 41:8 BY MR. KENNEDY: 41:9 Q. Let's look at 2005 to 2007, all 41:10 right? You came in 2004. 41:11 A. Right. 41:12 Q. Let's look at the period of '05 41:13 to '07, all right? 41:14 A. Yep. 41:15 Q. You were the CEO and the 41:16 president of the HDMA at that point, true? 41:17 A. Yes. 41:18 Q. And you recall in 2005 the DEA 41:19 launched what it called the Distributor 41:20 Initiative. Do you remember that? 41:21 A. I actually thought it was 41:22 later. I don't know the exact date. 41:23 Q. All right. The Distributor 41:24 Initiative involved the DEA actually going 41:25 down and sitting down with each of the 42:1 distributors in person to talk about the 42:2 diversion of opioids into our communities and 42:3 talk about the DEA expectations of the 42:4 distributors with respect to stopping 42:5 diversion. 42:6 Do you recall that, sir? 42:7 A. Not in that timeline and not to 42:8 that degree of specificity. 42:9 Q. Well, you certainly know that	JG02.20

Page/Line

Source

ID

42:10 in 2005 -- in 2005 each of the Big Three sat
 42:11 down with the DEA to talk about the diversion
 42:12 and the DEA expectations of McKesson and
 42:13 Cardinal and AmerisourceBergen.

42:14 Do you recall that?

42:15 A. I had no access to that
 42:16 information.

42:17 Q. In 2006, a year into this
 42:18 initiative, sir, do you recollect that the
 42:19 DEA -- (audio malfunction) -- and increased
 42:20 its enforcement actions against certain
 42:21 distributors in the '06-07 time frame?

42:22 A. No.

42:23 Q. Do you recall that in this time
 42:24 frame, the DEA actually brought enforcement
 42:25 actions against McKesson, Cardinal and
 43:1 AmerisourceBergen?

43:2 A. Not in that time frame, I don't
 43:3 recall that.

43:4 Q. Do you remember in 2007, sir,
 43:5 that at the direction of your distributors,
 43:6 the HDA made the DEA its top priority?

43:7 A. No. It might have been a
 43:8 priority, but not necessarily -- not the only
 43:9 priority, and certainly at that time,
 43:10 probably my recollection would be not the top
 43:11 priority at all.

43:12 Q. Well, sir, I'm very clear in my
 43:13 question.

43:14 Top, number one priority
 43:15 beginning in '07 was the DEA, true? Top
 43:16 priority.

43:17 A. I cannot recall if it was the
 43:18 top priority.

43:19 Q. Let's look at Exhibit 40.

43:25 - 46:10

Gray, John 07-30-2020 (00:02:54)

JG02.21

43:25 Q. And when I say top, I mean
 44:1 number one, all right?

44:2 A. I hear you.

44:3 Q. Exhibit 40 is an e-mail by you,

Page/Line

Source

ID

44:4 October 30, 2007.

44:5 A. Uh-huh.

44:6 Q. Your name, John Gray, and you

44:7 are sending it to Paul Julian. Who is Paul

44:8 Julian?

44:9 A. Paul Julian was the group

44:10 president of McKesson, distribution company.

44:11 Q. 2007, you say in your e-mail:

44:12 Paul: I hope your McKesson board meeting

44:13 went well. The HDMA board meeting was very

44:14 good. The budget was approved with very

44:15 little discussion. Everyone was pleased with

44:16 the balanced budget and no dues increases for

44:17 2008.

44:18 Now, here's what's important.

44:19 You state: The DEA issue concerning the

44:20 recent surge in DEA enforcement around

44:21 suspicious orders and methadone was moved to

44:22 the top of the HDMA priority list -- issue

44:23 list.

44:24 Do you see that?

44:25 A. I do.

45:1 Q. It was at the top of your

45:2 priority list. That's the truth as you

45:3 stated back in 2007, sir, true?

45:4 A. No, because you're

45:5 misunderstanding what that meant. We had a

45:6 dashboard with three letters, A, B and C, and

45:7 before that, I believe the DEA issues were a

45:8 B level priority along with a good 10 or 15

45:9 other issues. It was then moved up to the A

45:10 list of issues, such as federal preemption on

45:11 pedigree, on deficit reduction, retail survey

45:12 price. It was one of a myriad of issues that

45:13 we considered priority issues for the

45:14 association. But to say it was the top

45:15 priority issue is a complete

45:16 mischaracterization of what was actually

45:17 being said.

45:18 Q. Sir, I understand. Eric

Page/Line	Source	ID
45:19	Kennedy sitting over here isn't saying --	
45:20	A. I understand.	
45:21	Q. -- moved to the top of the HDMA	
45:22	priority list. Those are your words, sir.	
45:23	Did I read that accurately, where you say	
45:24	that the DEA was moved to the top of the HDMA	
45:25	priority issue list? Did I read that right,	
46:1	your words?	
46:2	A. The words are absolutely	
46:3	correct. The statement of it is the top,	
46:4	along with multiple others, but I didn't	
46:5	repeat all the other issues.	
46:6	Q. More specifically, sir, the DEA	
46:7	in your words, top of the priority list, what	
46:8	was at the top of the priority list was the	
46:9	DEA and its enforcement actions against the	
46:10	distributors, correct?	
46:13 - 46:13	Gray, John 07-30-2020 (00:00:00)	JG02.22
46:13	A. No.	
46:16 - 47:2	Gray, John 07-30-2020 (00:00:45)	JG02.23
46:16	Q. Well, let me ask you: You say	
46:17	here in your e-mail that you were talking	
46:18	about the surge, a recent surge in DEA	
46:19	enforcement. Is that what it says?	
46:20	A. Yes.	
46:21	Q. Are those your words? Yes?	
46:22	Those are your words?	
46:23	A. Right.	
46:24	Q. Now, despite the DEA moving to	
46:25	the top of this priority list, in 2012, the	
47:1	HDA had to increase or double its efforts	
47:2	with respect to the DEA, did it not, in 2012?	
47:6 - 47:7	Gray, John 07-30-2020 (00:00:03)	JG02.24
47:6	Q. Do you recall that, sir, 2012,	
47:7	a special year?	
47:9 - 47:15	Gray, John 07-30-2020 (00:00:13)	JG02.25
47:9	A. Say that again. What did we do	
47:10	in 2012?	
47:11	BY MR. KENNEDY:	
47:12	Q. 2012, you folks had to sit down	

47:19 - 49:6

47:13 and increase your focus and your efforts with
 47:14 respect to the DEA and its enforcement
 47:15 actions.

Gray, John 07-30-2020 (00:01:23)

JG02.26

47:19 A. No, not specifically. I mean,
 47:20 it was always -- we were always -- by 2012 we
 47:21 were working that issue on a variety of
 47:22 levels. Was it more than 2011 or less than
 47:23 2013, I couldn't recall.
 47:24 BY MR. KENNEDY:
 47:25 Q. All right. 2012, Cardinal had
 48:1 its registration suspended in February by the
 48:2 DEA with respect to certain of its
 48:3 distribution centers. Do you recall that,
 48:4 sir, one of the Big Three?
 48:5 A. I think it was one of its
 48:6 distribution centers, correct?
 48:7 Q. Taken away in 2012, Cardinal,
 48:8 right?
 48:9 A. Yes.
 48:10 Q. Do you recall that in 2012
 48:11 McKesson got a series of subpoenas from the
 48:12 DEA with respect to documents and records in
 48:13 2012; that was happening to another member of
 48:14 the Big Three in 2012?
 48:15 A. Yeah, I don't -- I do not
 48:16 recall that. At this time I don't recall
 48:17 that.
 48:18 Q. Do you recall in 2012 CVS and
 48:19 Walgreens, both of them, they got
 48:20 registrations suspended by the DEA --
 48:21 A. Well, the CVS one I remember.
 48:22 Q. Do you remember in 2012 the
 48:23 Attorney General for the state of
 48:24 West Virginia filed a lawsuit against 14
 48:25 distributors, 11 of them were members of the
 49:1 HDA? Do you recall that?
 49:2 A. That's -- I recall that.
 49:3 Q. 2012 was a big year at the HDA.
 49:4 They had to, at the direction of the

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
49:9 - 49:18	<p>49:5 executive committee, begin to focus even more 49:6 on the DEA, true?</p> <p>Gray, John 07-30-2020 (00:00:23)</p> <p>49:9 A. You know, I would hesitate to 49:10 just say we were doing it more or less. We 49:11 were doing it. 49:12 BY MR. KENNEDY: 49:13 Q. Sir, in 2012, the HDA on behalf 49:14 of its members was so concerned about the DEA 49:15 that you personally organized a meeting with 49:16 a Washington, D.C. law firm, Williams & 49:17 Connolly. Do you remember organizing that 49:18 meeting, sir?</p>	JG02.27
49:21 - 50:7	<p>Gray, John 07-30-2020 (00:00:22)</p> <p>49:21 A. Which firm did we do? 49:22 BY MR. KENNEDY: 49:23 Q. Williams & Connolly -- 49:24 A. Williams & Connolly? 49:25 Q. Yes, sir. 50:1 A. Yep. 50:2 Q. You organized a meeting, sir, 50:3 in 2012 with this Washington, D.C. law firm 50:4 to try to figure out what to do with the DEA 50:5 and its enforcement of the law against 50:6 distributors. That's why that meeting was 50:7 put together, true?</p>	JG02.28
50:19 - 50:22	<p>Gray, John 07-30-2020 (00:00:09)</p> <p>50:19 THE WITNESS: Well, that was my 50:20 next question. It was an 50:21 attorney-client relationship. I don't 50:22 feel I should answer any of that.</p>	JG02.29
50:25 - 51:1	<p>Gray, John 07-30-2020 (00:00:01)</p> <p>50:25 MR. KENNEDY: Let's look at 51:1 Exhibit 2. Let's look at Exhibit 2,</p>	JG02.30
51:10 - 53:20	<p>Gray, John 07-30-2020 (00:02:30)</p> <p>51:10 Q. Because in 2012, McKesson, 51:11 Cardinal and AmerisourceBergen said you 51:12 needed to do something about the 51:13 distributors, and so you organized a special 51:14 meeting in Washington, D.C. --</p>	JG02.31

Page/Line

Source

ID

51:15 A. Yes.

51:16 Q. -- with this law firm, true?

51:17 A. Right. That's -- that's what

51:18 you just referred to, correct.

51:19 Q. Okay. Absolutely. Let's look

51:20 at Exhibit 2. This is an e-mail from you,

51:21 John Gray, is it not, sir?

51:22 A. Let me see. Let me

51:23 double-check. To -- looks like to the entire

51:24 executive committee, all seven members,

51:25 right.

52:1 Q. All seven members including the

52:2 Big Three, true?

52:3 A. And -- right, and copied to our

52:4 counsel, our outside counsel.

52:5 Q. You state, sir, here in

52:6 April 2012: Gentlemen: After our last

52:7 telephone conference call on April 6, HDA met

52:8 with legal counsel, Bob Barnett and Richard

52:9 Cooper of Williams & Connolly in

52:10 Washington, D.C. Both attorneys were very

52:11 helpful several years ago in initializing our

52:12 original meetings with the DEA after the

52:13 first outbreak of ISOs.

52:14 ISOs are immediate suspension

52:15 orders, right?

52:16 A. Correct.

52:17 Q. Those are enforcement actions

52:18 by the DEA, correct?

52:19 A. Correct.

52:20 Q. Given their experience and

52:21 knowledge of the political and legal aspects

52:22 of dealing with DEA, we updated them on the

52:23 industry's recent concerns with DEA's latest

52:24 efforts -- the DEA's latest efforts, those

52:25 are efforts to enforce the law against

53:1 distributors, correct?

53:2 A. Its latest efforts to

53:3 thwart what they considered to be drug

53:4 diversion.

Page/Line

Source

ID

53:5 Q. Absolutely.
 53:6 Recent concerns with DEA's
 53:7 latest efforts to thwart drug diversion and
 53:8 abuse. Attached is a brief summary of our
 53:9 discussion and conclusions with several
 53:10 possible courses of action HDMA could take.
 53:11 The entire list of ideas is not necessarily
 53:12 mutually exclusive, but does represent a wide
 53:13 range of potential actions the association
 53:14 and the industry may consider in an effort to
 53:15 alter the present direction DEA is taking
 53:16 with respect to suspicious order monitoring.
 53:17 Sir, the direction the DEA was
 53:18 taking, the direction you're talking about
 53:19 are actions brought by the DEA against
 53:20 distributors to enforce the law, true?

53:23 - 56:23

Gray, John 07-30-2020 (00:03:10)

JG02.32

53:23 A. It was directions to enforce
 53:24 their interpretation of the Controlled
 53:25 Substances Act.
 54:1 BY MR. KENNEDY:
 54:2 Q. Absolutely. And the purpose of
 54:3 this meeting was to look for a strategy to,
 54:4 as you say, quote, alter the direction of the
 54:5 DEA. That was the purpose of the meeting, to
 54:6 alter the DEA's direction. Is that what it
 54:7 says?
 54:8 A. Yeah, that's what it says.
 54:9 Q. Attached is a memo of that
 54:10 meeting. If you'll turn to the next page.
 54:11 A. Yep.
 54:12 Q. And this is a memo, if you look
 54:13 at the top, you sent this memo to your
 54:14 executive committee, true?
 54:15 A. Yeah, looks like it.
 54:16 Q. Potential -- yes? Correct?
 54:17 A. Yes.
 54:18 Q. It says: Potential approaches
 54:19 to addressing DEA enforcement issues.
 54:20 Do you see that?

Page/Line

Source

ID

54:21 A. Uh-huh.

54:22 Q. First paragraph, you state:

54:23 April 13, HDMA staff and legal counsel met

54:24 with Bob Barnett and Rich Cooper from the law

54:25 firm of Williams & Connolly. The purpose of

55:1 the meeting was to discuss potential

55:2 strategies for addressing DEA-related issues.

55:3 This memo provides an overview of the meeting

55:4 and the proposed recommendations moving

55:5 forward.

55:6 Next paragraph, you state --

55:7 again, you went to Williams & Connolly

55:8 because you respected them as lawyers and

55:9 their advice and their knowledge on this

55:10 particular topic, true?

55:11 A. Yeah, well --

55:12 Q. That's why you went to them.

55:13 A. For a variety of reasons,

55:14 because they understood the Washington

55:15 situation in terms of dealing with the media

55:16 and dealing with the DEA themselves. It was

55:17 a variety of --

55:18 Q. Absolutely. Right. You

55:19 respected them as lawyers. You respected

55:20 their opinion --

55:21 A. Correct.

55:22 Q. -- and special information and

55:23 knowledge about these issues with the DEA,

55:24 correct? That's why you went?

55:25 A. Okay.

56:1 Q. The next paragraph you state:

56:2 Mr. Barnett and Mr. Cooper felt that new

56:3 litigation to specifically address our

56:4 concerns with DEA was highly unlikely to be

56:5 successful due to limited momentum in that

56:6 direction. Moreover, elected officials tend

56:7 to steer away from controversy during an

56:8 election year.

56:9 Here's what's important, what

56:10 your lawyers told you: They, meaning your

Page/Line	Source	ID
	56:11 lawyers that you set this meeting up with, 56:12 they felt that we may be better off averting 56:13 DEA actions by taking even stronger 56:14 compliance measures. 56:15 Is that what they told you? 56:16 A. You know, if I wrote that at 56:17 the time, it must have been my impression. 56:18 It is -- now, I can't specifically recall. 56:19 Q. You want to avert DEA actions. 56:20 They said maybe your distributors should take 56:21 even stronger compliance measures. That's 56:22 what you wrote? 56:23 A. Okay.	
57:2 - 57:8	Gray, John 07-30-2020 (00:00:18)	JG02.33
	57:2 Q. I mean, sir, it was pretty 57:3 simple advice, wasn't it? They were kind of 57:4 saying to you and the distributors: If you 57:5 want to stop getting arrested for robbing 57:6 banks, maybe you ought to just stop robbing 57:7 banks. Pretty straightforward, simple, 57:8 commonsense advice from your lawyers, right?	
57:12 - 57:25	Gray, John 07-30-2020 (00:00:32)	JG02.34
	57:12 Q. Correct? 57:13 A. I mean, that's your 57:14 interpretation. That's fine. That's your 57:15 interpretation. Okay. 57:16 Q. Let me ask you this. We're 57:17 going to talk about this a lot today. 57:18 Instead of taking your lawyers' advice to 57:19 work with the distributors to become more 57:20 compliant with the law, instead of taking 57:21 that advice, what the HDA decided to do 57:22 instead was launch a public relations 57:23 program; isn't that what happened, sir, back 57:24 in 2012? 57:25 A. No, that is not --	
58:6 - 58:13	Gray, John 07-30-2020 (00:00:27)	JG02.35
	58:6 Q. Sir, let me be real clear: 58:7 Instead of deciding to become more compliant 58:8 with the law, as your lawyers recommended,	

Page/Line	Source	ID
58:9 - 58:17	58:9 the HDMA decided to launch a public relations 58:10 program to try to convince people that the 58:11 distributors were becoming more compliant 58:12 with the law; isn't that exactly what 58:13 happened starting -- Gray, John 07-30-2020 (00:00:00)	JG02.36
58:21 - 58:22	58:17 Q. -- in 2012? Gray, John 07-30-2020 (00:00:03)	JG02.37
58:24 - 60:5	58:21 Q. Isn't that exactly what 58:22 happened starting in 2012, sir? Gray, John 07-30-2020 (00:01:13) 58:24 A. There are several things in 58:25 2012. Public relations was one of them. 59:1 These lists of the items in the rest of the 59:2 memo were actions that the distributors were 59:3 considering taking to do their own -- 59:4 essentially, set up their own ARCOS database, 59:5 their own thresholds because we had tried and 59:6 failed extensively over five years to get the 59:7 DEA to rule-make around defining the concepts 59:8 and the contours of suspicious order. 59:9 And so the -- one of their 59:10 suggestions was maybe you need to just do 59:11 your own and self-police since DEA wasn't 59:12 going to do that. That's the gist of all 59:13 this. And then public relations was also one 59:14 other element of it. 59:15 BY MR. KENNEDY: 59:16 Q. One other element? Is that 59:17 your statement, sir. One other element? 59:18 A. Yeah, in addition to the 59:19 consideration or all these particular tactics 59:20 which were considered. 59:21 Q. Let's take a look at your 59:22 statement. Let's move forward and look at 59:23 the decision on the part of your executive 59:24 committee, on the part of your counsel, on 59:25 the part of your board of directors -- 60:1 A. Uh-huh. 60:2 Q. -- to move forward with public	JG02.38

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
60:3 - 60:10	60:3 relations instead of putting its money into 60:4 becoming more compliant. Let's take a look 60:5 at that. Gray, John 07-30-2020 (00:00:02)	JG02.39
60:16 - 61:19	60:9 Q. Let's start with Exhibit 17, if 60:10 you could. Gray, John 07-30-2020 (00:00:52) 60:16 Q. Exhibit 17, these are the 60:17 minutes from the Government and Public Policy 60:18 Council meeting, correct? 60:19 A. Let me just see a minute. 60:20 Which date? September 2012. Okay. 60:21 Q. This is September 18th, 2012, 60:22 correct? 60:23 A. Yeah. 60:24 Q. And the Government and Public 60:25 Policy Council, that is a council of the 61:1 HDMA, true? 61:2 A. It is. 61:3 Q. And the minutes -- we're going 61:4 to talk about a lot of minutes, but the 61:5 minutes to the executive committee meetings, 61:6 the board of directors -- 61:7 A. Yeah. 61:8 Q. -- the minutes were kept in the 61:9 ordinary course of business of the HDA; would 61:10 that be true? 61:11 A. They were. 61:12 Q. And they were usually put 61:13 together by folks with firsthand knowledge of 61:14 what happened at the meeting because they 61:15 were present at the meeting. Would that be 61:16 customarily true with respect to the minutes 61:17 that we would look at? 61:18 A. Outside counsel did these 61:19 minutes. Gray, John 07-30-2020 (00:00:47)	JG02.40
61:25 - 62:23	61:25 Q. They -- the counsel that put 62:1 these together, some of these, they would 62:2 have firsthand knowledge of what occurred at	JG02.41

Page/Line

Source

ID

62:3 the meetings, true?

62:4 A. Well, if they were in the room,

62:5 they did, sure.

62:6 Q. Okay. And go to the next page,

62:7 if you would, 77 down in the corner.

62:8 A. 7 --

62:9 Q. Government and Public Policy

62:10 Council. If we look at that, you've got

62:11 members of McKesson there and Cardinal's on

62:12 that council, McKesson's got another person

62:13 on that council. AmerisourceBergen has

62:14 someone on the council. They have a second

62:15 person on the council.

62:16 A. Uh-huh.

62:17 Q. Cardinal has a second person on

62:18 the council, correct?

62:19 A. Correct.

62:20 Q. The Big Three is well

62:21 represented on the Government Public Policy

62:22 Council, true?

62:23 A. And our independents are too.

62:24 - 63:3

Gray, John 07-30-2020 (00:00:13)

JG02.42

62:24 Q. And if we go to page 79, it

62:25 looks like you were present at that meeting,

63:1 true? 79, do you see that?

63:2 A. Looks like I was.

63:3 Q. Go to page 88, if you would.

63:4 - 65:25

Gray, John 07-30-2020 (00:02:38)

JG02.43

63:4 Do you see the heading Controlled Substances

63:5 Regulatory Issues within the minutes of this

63:6 meeting?

63:7 A. Yeah.

63:8 Q. That heading, and we're going

63:9 to start with the first paragraph: Anita

63:10 Ducca, she's from the HDA, true?

63:11 A. Correct.

63:12 Q. What was her position?

63:13 A. She was vice president of

63:14 regulatory affairs.

63:15 Q. She had been there -- how long

63:16 was she there during your tenure?

63:17 A. She was there all the time

63:18 during my tenure, but when she started, I

63:19 don't know.

63:20 Q. So she is competent, qualified,

63:21 experienced; would that be right?

63:22 A. Well, I didn't work with her

63:23 day to day, but those who worked with her,

63:24 her reviews spoke for themselves.

63:25 Q. And Ms. Ducca states:

64:1 Ms. Ducca presented to the GPPC -- that's the

64:2 Government Public Policy Council, right?

64:3 A. Yep.

64:4 Q. -- and the SBDC regarding

64:5 regulatory pathways for further engagement

64:6 with DEA.

64:7 A. Right.

64:8 Q. There continues to be intense

64:9 DEA scrutiny of wholesale distributors'

64:10 activities and industry would benefit from

64:11 greater clarity from the agency. Options for

64:12 further engaging DEA to demonstrate wholesale

64:13 distributors' limited role in diversion and

64:14 abuse of controlled substances include.

64:15 Now, we've got six different

64:16 options, and these are the options that

64:17 appeared in the memo from your lawyers in

64:18 D.C., true?

64:19 A. Correct. Correct.

64:20 Q. Option number one, petitioning

64:21 DEA for changes to rules.

64:22 So that was a thought, we'll

64:23 petition the DEA and they'll clarify the

64:24 rules and that might help distributors become

64:25 more compliant, correct?

65:1 A. That was the -- that was what

65:2 the -- that's what we had been doing. Yeah,

65:3 that was an ongoing strategy.

65:4 Q. Okay. Updating the ICG.

65:5 That's the industry compliance guidelines

Page/Line

Source

ID

65:6 that you folks created in '08, correct?

65:7 A. Correct.

65:8 Q. And there was the thought,

65:9 maybe we'll update those and that could help

65:10 distributors become more compliant?

65:11 A. Well, we -- the problem with

65:12 the ICGs is we didn't know if the DEA agreed

65:13 with them or not agreed with them.

65:14 Q. I didn't ask that, sir. I

65:15 didn't ask that.

65:16 A. Well, I'm telling you that.

65:17 Q. Next -- we're going to talk in

65:18 depth about the ICGs.

65:19 A. Okay.

65:20 Q. The next, which you mentioned,

65:21 maybe we could collect ARCOS data and kind of

65:22 create our own ARCOS-like database, correct?

65:23 A. That was -- yes.

65:24 Q. You also said another

65:25 possibility mentioned by your lawyers was

66:1 - 67:4

Gray, John 07-30-2020 (00:01:05)

JG02.44

66:1 obtaining distributor access to PDMP data.

66:2 A. Right.

66:3 Q. And that would be drug

66:4 monitoring programs, correct?

66:5 A. Correct.

66:6 Q. And that is data that

66:7 physicians and pharmacists send into a

66:8 statewide database where they have

66:9 information about what type of opioids are

66:10 being prescribed, what type of prescriptions

66:11 are being dispensed, correct?

66:12 A. Yes.

66:13 Q. That was recommended.

66:14 Next recommendation, studying

66:15 and establishing a customer

66:16 algorithm/threshold. And that was something

66:17 that was discussed with respect to thresholds

66:18 as they relate to suspicious order

66:19 monitoring, true?

66:20 A. I believe so.
 66:21 Q. And the final possibility for,
 66:22 again, increasing compliance, was retaining a
 66:23 third party to conduct an audit, and that
 66:24 would be an audit of the internal suspicious
 66:25 order monitoring policies and procedures of
 67:1 distributors. Let's get a third party to
 67:2 come in and see if they're doing a good job.
 67:3 That was something else that was proposed,
 67:4 true?

67:7 - 69:1

Gray, John 07-30-2020 (00:01:45)

JG02.45

67:7 A. Yeah, I don't recall that one
 67:8 specifically, but it's written here.
 67:9 BY MR. KENNEDY:
 67:10 Q. And the fact of the matter is
 67:11 we've got six proposals here, sir, and this
 67:12 council, this HDMA council discussed them --
 67:13 A. Uh-huh.
 67:14 Q. -- and decided not to pursue at
 67:15 this point any of the suggestions, true?
 67:16 That's what this document says.
 67:17 A. I don't recall without going
 67:18 through this and reading the ending. I don't
 67:19 know.
 67:20 Q. Let's look at the next
 67:21 sentence.
 67:22 A. I know they were discussed.
 67:23 Q. Let's look at the next
 67:24 sentence: Discussion ensued. GPPC/SBDC
 67:25 members recognized that any such effort would
 68:1 be significantly multi-faceted, with a
 68:2 regulatory, legislative and communications
 68:3 strategy.
 68:4 Turn the page, if you would; up
 68:5 top sentence -- here's the recommendation of
 68:6 this council, sir: Members recommended
 68:7 tabling further discussion of this proposed
 68:8 initiative until the board meets and
 68:9 discusses the proposed public relations
 68:10 strategy.

Page/Line	Source	ID
	68:11 Do you remember that	
	68:12 recommendation of this committee, sir?	
	68:13 A. Not specifically, but yes, go	
	68:14 ahead.	
	68:15 Q. Is that what the minutes say?	
	68:16 Is that what the minutes say, sir?	
	68:17 A. Yes, it is, but I -- I don't	
	68:18 necessarily have to recall that, but if	
	68:19 that's -- that is what the minutes say.	
	68:20 Q. Let's look at what the board of	
	68:21 directors decides about whether we're going	
	68:22 to get more compliant as our lawyers	
	68:23 recommended or we're just going to launch a	
	68:24 PR program to tell people we're more	
	68:25 compliant. Let's look at what your board	
	69:1 said. Exhibit 19.	
69:2 - 69:6	Gray, John 07-30-2020 (00:00:01)	JG02.46
	69:2 (Whereupon, Deposition Exhibit	
	69:3 Gray-19, 10/1/12 HDMA Meeting Minutes,	
	69:4 HDA_MDL_000088238 - HDA_MDL_000088244,	
	69:5 was marked for identification.)	
	69:6 BY MR. KENNEDY:	
69:7 - 69:23	Gray, John 07-30-2020 (00:00:33)	JG02.47
	69:7 Q. These are the board of	
	69:8 directors minutes --	
	69:9 A. Yep.	
	69:10 Q. -- October 1, 2012.	
	69:11 A. Uh-huh.	
	69:12 Q. The board of directors -- the	
	69:13 meeting was held at the Ritz-Carlton Palm	
	69:14 Beach. Do you recollect going down to Palm	
	69:15 Beach to the Ritz-Carlton?	
	69:16 A. Yep.	
	69:17 Q. McKesson, Cardinal,	
	69:18 AmerisourceBergen all had representatives on	
	69:19 the board, did they not?	
	69:20 A. And all the members were on the	
	69:21 board, correct.	
	69:22 Q. Go to page 41 down in the	
	69:23 bottom corner. Dot, dot, dot, 41.	

Page/Line

Source

ID

69:24 - 72:14

Gray, John 07-30-2020 (00:02:51)

JG02.293

69:24 A. Okay.

69:25 Q. And you see Controlled

70:1 Substances down at the bottom? We're going

70:2 to look at that.

70:3 A. Uh-huh.

70:4 Q. In your minutes, your minutes

70:5 state Mr. Kelly, HDMA senior vice president,

70:6 government affairs, reported on recent

70:7 developments regarding controlled substances

70:8 diversion and abuse. HDA has convened a

70:9 Controlled Substances Task Force --

70:10 A. Correct.

70:11 Q. -- which includes elements from

70:12 the legislative, regulatory and public

70:13 relations arenas. The GPPC -- that's the

70:14 council we just talked about from the HDMA,

70:15 right?

70:16 A. Yep.

70:17 Q. The GPPC supported development

70:18 of a public relations strategy, working with

70:19 an outside firm, to augment legislative and

70:20 regulatory initiatives.

70:21 Do you see that?

70:22 A. Yes.

70:23 Q. Go to the next page, 42.

70:24 Second sentence starts with Mr. Parker.

70:25 Mr. Parker discussed the

71:1 current state of play and the support of the

71:2 Controlled Substances Task Force to engage a

71:3 public relations firm to assist with the

71:4 campaign to better educate the public and

71:5 decision-makers as to what pharmaceutical

71:6 distributors do. The focus -- this is

71:7 important because we're going to talk about

71:8 this in a minute.

71:9 The focus will be on who we are

71:10 and what we do to deliver lifesaving medicine

71:11 and prevent controlled substance diversion

71:12 and abuse.

Page/Line

Source

ID

71:13 You have a presentation
 71:14 thereafter by two public relations firms and
 71:15 then see where it says Action down below?

71:16 A. Yes.

71:17 Q. Do you see where it says

71:18 Action?

71:19 A. Yep.

71:20 Q. So this is what your board is

71:21 deciding. That's what action means. This is

71:22 what we're deciding, this is what we're going

71:23 to do, this is our course, true? That's what

71:24 action means?

71:25 A. Okay.

72:1 Q. The board decides: On motion

72:2 duly made and seconded, the board approved

72:3 retaining APCO to assist with the public

72:4 relations initiative, with the budget and

72:5 details to be worked out by the executive

72:6 committee and staff.

72:7 That's what was decided. That

72:8 was the action taken, true?

72:9 A. Yeah, at that meeting, correct.

72:10 Q. So the decision is made at this

72:11 point in time to hire a PR firm to tell

72:12 people what the distributors are doing to,

72:13 quote, prevent diversion and abuse. That's

72:14 why they were hired, true?

72:17 - 72:24

Gray, John 07-30-2020 (00:00:18)

JG02.48

72:17 A. What was the last part of that

72:18 question? That's what the what?

72:19 BY MR. KENNEDY:

72:20 Q. The focus -- your minutes say

72:21 the focus of this PR firm is going to tell

72:22 people what distributors do to, quote,

72:23 prevent controlled substance diversion and

72:24 abuse. That was the focus of the PR.

73:2 - 73:15

Gray, John 07-30-2020 (00:00:21)

JG02.49

73:2 A. Wait, I'm not seeing that

73:3 sentence in the material. Where is it?

73:4 BY MR. KENNEDY:

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
	73:5 Q. It's highlighted -- look at the 73:6 screen. 73:7 A. Yeah, that's what I -- 73:8 Q. Do you see that? 73:9 A. Okay. Yeah. 73:10 Q. That was the focus -- that's 73:11 the focus of the PR campaign at this point in 73:12 time as determined by your board of 73:13 directors. Is that what the minutes say, 73:14 sir? 73:15 A. That is what it says.	
73:20 - 73:22	Gray, John 07-30-2020 (00:00:10) 73:20 Q. So the GPPC, the Government 73:21 Public Policy Council, and now the board, 73:22 have said let's do public relations, true?	JG02.50
74:2 - 74:2	Gray, John 07-30-2020 (00:00:01) 74:2 Q. True?	JG02.51
74:4 - 74:17	Gray, John 07-30-2020 (00:00:39) 74:4 A. Insofar as paragraph -- it 74:5 describes what was discussed in 74:6 paragraph (a), but there are many more things 74:7 discussed beyond that in regarding -- 74:8 BY MR. KENNEDY: 74:9 Q. Sir, your lawyer said if you 74:10 want to get the DEA off the back of the 74:11 distributors with respect to enforcing the 74:12 law, your lawyers in Washington, D.C. said 74:13 get more compliant with the law, and the 74:14 board says let's launch a PR program with the 74:15 focus on telling people what we do to prevent 74:16 diversion. That's the decision made by your 74:17 board in 2012. Is that what it says, sir?	JG02.52
74:20 - 76:1	Gray, John 07-30-2020 (00:01:25) 74:20 A. Yeah, I mean, you've now 74:21 combined two different documents to make that 74:22 conclusion, but individually, this page says 74:23 what it says. Page 6 or page 88 -- 8242. 74:24 BY MR. KENNEDY: 74:25 Q. Moving down to the bottom of 75:1 the page, if you would, down at the bottom of	JG02.53

Page/Line

Source

ID

75:2 page 42. Do you see where it says Ms. Anita

75:3 Ducca?

75:4 A. Yes. Yeah.

75:5 Q. She says -- again, she's the VP

75:6 of regulatory affairs. Ms. Anita Ducca, HDMA

75:7 vice president, regulatory affairs, discussed

75:8 regulatory activities including the

75:9 possibility of petitioning DEA to clarify its

75:10 regulatory requirements for suspicious order

75:11 monitoring.

75:12 That was one of the things that

75:13 your lawyer said you'd like to do, correct?

75:14 A. Correct.

75:15 Q. The next sentence in your

75:16 minutes: Discussion ensued. Next page: And

75:17 the board decided to pursue the public

75:18 relations initiative prior to deciding on the

75:19 desirability of filing a petition with the

75:20 DEA.

75:21 Do you see that?

75:22 A. Right.

75:23 Q. If they petition, they'd have

75:24 to become more compliant, but your board is

75:25 saying let's look to PR first. Is that what

76:1 your minutes tell us?

76:4 - 76:4 **Gray, John 07-30-2020 (00:00:00)**

JG02.54

76:4 A. No.

76:5 - 76:7 **Gray, John 07-30-2020 (00:00:03)**

JG02.55

76:5 BY MR. KENNEDY:

76:6 Q. Did I read that correctly, sir?

76:7 Did I read that correctly?

76:10 - 77:19 **Gray, John 07-30-2020 (00:01:11)**

JG02.56

76:10 A. You're reading -- you're

76:11 reading it, but it's far more nuanced than

76:12 that. We had been after DEA since 2006 to

76:13 actually explain suspicious orders more

76:14 carefully and do rule monitoring, and it was

76:15 decided that because DEA had ignored us for

76:16 six years that, you know what, we had to fix

76:17 the -- fix some of the public relations

Page/Line

Source

ID

76:18 issues before going back to that well, again.

76:19 So you can't read these things

76:20 out of context. Well, you can, and you are,

76:21 but that's fine.

76:22 BY MR. KENNEDY:

76:23 Q. Did the HDMA ever file a formal

76:24 petition, ever file a formal petition --

76:25 A. You'd have to ask -- I really

77:1 don't recall.

77:2 Q. You don't recall?

77:3 A. No, but I remember

77:4 conversations with DEA when the staff -- we

77:5 would meet with DEA routinely --

77:6 Q. We're going to talk about that.

77:7 A. -- and we asked them that

77:8 regularly, and I believe --

77:9 Q. We're going to talk --

77:10 A. I believe there were documents,

77:11 but off the top of my head, it's been

77:12 14 years, I don't recall.

77:13 Q. Sir, the fact of the matter is

77:14 the HDA never filed a formal petition --

77:15 A. Well --

77:16 Q. -- that asked the DEA to amend

77:17 the regulations with respect to suspicious

77:18 order monitoring. That is the truth,

77:19 correct?

77:22 - 77:22 **Gray, John 07-30-2020 (00:00:01)**

JG02.57

77:22 A. I don't know if that's correct.

77:25 - 78:22 **Gray, John 07-30-2020 (00:00:47)**

JG02.58

77:25 Q. No? At least at this point in

78:1 time the board is saying let's not do that,

78:2 let's do PR. That's what the minutes say,

78:3 correct?

78:4 A. The minutes say: Discussion

78:5 ensued and the board decided to pursue the

78:6 public relations initiative prior to deciding

78:7 the desirability of filing a petition.

78:8 That's what is written.

78:9 Q. Thank you.

Page/Line

Source

ID

78:10 Let's look at the public
 78:11 relations program then that gets launched.
 78:12 You hired APCO? You recall APCO, the public
 78:13 relations firm, do you not?
 78:14 A. I do.
 78:15 Q. Do you recall that in 2012 you
 78:16 gave a quarter of a million dollars to APCO
 78:17 to begin this public relations program?
 78:18 A. I don't recall the exact
 78:19 number.
 78:20 Q. Do you recall the next year,
 78:21 2013, you gave them another quarter of
 78:22 a million dollars for the campaign?

79:2 - 81:5

Gray, John 07-30-2020 (00:02:10)

JG02.59

79:2 A. Budget-wise, I don't recall
 79:3 specifics.
 79:4 BY MR. KENNEDY:
 79:5 Q. 2014, do you remember hiring
 79:6 another PR firm, GMMB, in '14. Do you recall
 79:7 that, sir?
 79:8 A. Correct.
 79:9 Q. Do you recall in 2016 you hired
 79:10 another PR firm, Reservoir?
 79:11 A. Yes, because Reservoir was the
 79:12 successor of APCO. The gentleman left APCO,
 79:13 became his own firm. So he just took the
 79:14 business with him. We didn't hire a third
 79:15 firm.
 79:16 Q. In addition to public relations
 79:17 firms, would the HDA also hire third-party
 79:18 lobbyist organizations?
 79:19 A. Yes.
 79:20 Q. And you used the lobbyist
 79:21 organizations to lobby not only the federal
 79:22 government, but you also utilized separate
 79:23 lobbyist firms to lobby in state governments.
 79:24 Would that be accurate?
 79:25 A. In certain states.
 80:1 Q. How many times have you
 80:2 testified in front of Congress on behalf of

Page/Line	Source	ID
80:3	the HDMA?	
80:4	A. How many times did I testify	
80:5	when?	
80:6	Q. In your career, how many times	
80:7	have you presented to Congress, sir, or the	
80:8	Senate?	
80:9	A. Probably 10 or 12 times at	
80:10	least.	
80:11	Q. Sir, the message, the public	
80:12	relations message to Congress, to the Senate,	
80:13	to state legislatures, to governors, to the	
80:14	media, was that the distributors were	
80:15	committed, were committed to stopping	
80:16	diversion and abuse and addiction. That was	
80:17	the message, true?	
80:18	A. I have to go back and look at	
80:19	all those. It's been many years since I	
80:20	looked through all those proposals. And most	
80:21	of these proposal items were never used.	
80:22	Q. I'm not talking about the --	
80:23	sir, I'm not talking about proposals. I'm	
80:24	talking the actual message at the end of the	
80:25	day, the message that you're delivering to	
81:1	Congress and the Senate and state	
81:2	legislatures and the governors and the media	
81:3	is that the distributors are committed to	
81:4	stopping diversion, abuse and addiction.	
81:5	That was the message.	
81:9 - 81:9	Gray, John 07-30-2020 (00:00:01)	JG02.60
81:9	Q. True?	
81:11 - 82:1	Gray, John 07-30-2020 (00:00:37)	JG02.61
81:11	A. I think it was part of a larger	
81:12	message, yes.	
81:13	BY MR. KENNEDY:	
81:14	Q. And, in fact, when you	
81:15	testified in 2012, that is the exact message	
81:16	that you delivered to Congress in 2012, true?	
81:17	A. Yeah, I don't know. I haven't	
81:18	read those testimonies in years.	
81:19	Q. 2012, 2014, 2017, the message	

Page/Line	Source	ID
	81:20 that you were delivering to Congress then was	
	81:21 that these distributors are committed, true?	
	81:22 A. Again, I have to go back and go	
	81:23 through all those to know. I don't know off	
	81:24 the top of my head, no.	
	81:25 Q. Let's look at Exhibit 47, if we	
	82:1 could, please.	
82:8 - 84:12	Gray, John 07-30-2020 (00:02:10)	JG02.62
	82:8 A. Okay.	
	82:9 BY MR. KENNEDY:	
	82:10 Q. And is this statement from John	
	82:11 M. Gray, that's you, right?	
	82:12 A. Yeah, that's me.	
	82:13 Q. President and CEO, HDMA, and	
	82:14 this is your statement to a subcommittee of	
	82:15 Congress, true?	
	82:16 A. Yep, Mary Bono.	
	82:17 Q. March 1, 2012. March 1, 2012.	
	82:18 A. Okay.	
	82:19 Q. Page 79, if you would, the very	
	82:20 next page.	
	82:21 A. Yep.	
	82:22 Q. The third paragraph down starts	
	82:23 with "Our industry."	
	82:24 A. Uh-huh.	
	82:25 Q. And you state: Our industry's	
	83:1 primary mission is to operate the safest and	
	83:2 most secure and efficient supply chain in the	
	83:3 world. As part of this mission, the	
	83:4 pharmaceutical industry -- distribution	
	83:5 industry is committed to addressing the	
	83:6 serious national problem of prescription drug	
	83:7 abuse and being part of the solution.	
	83:8 A. Correct.	
	83:9 Q. Correct?	
	83:10 A. Yeah, right. It's always been	
	83:11 a focus, is that we thought we could play a	
	83:12 role in helping solve the problem.	
	83:13 Q. And that's the consistent	
	83:14 message?	

Page/Line	Source	ID
	83:15 A. Uh-huh.	
	83:16 Q. The industry -- the industries,	
	83:17 the distributors, including	
	83:18 AmerisourceBergen, Cardinal, they are	
	83:19 committed -- they are committed to this issue	
	83:20 and this problem. It's part of their	
	83:21 mission, right?	
	83:22 A. Yeah. I mean, as far as what	
	83:23 that statement says, that is a common	
	83:24 statement.	
	83:25 Q. And you also -- besides, you	
	84:1 know, you testifying to Congress and the	
	84:2 Senate, in addition to the media	
	84:3 presentations, internally the HDA would	
	84:4 create what you folks called talking points.	
	84:5 Do you recall that?	
	84:6 A. Talking points for what?	
	84:7 Q. Talking points for, again,	
	84:8 talking points for pushing your public	
	84:9 relations message that you are committed,	
	84:10 that the industry is committed, it's part of	
	84:11 their mission to stop diversion, abuse and	
	84:12 addiction.	
84:18 - 84:24	Gray, John 07-30-2020 (00:00:12)	JG02.63
	84:18 A. And the answer is: If you have	
	84:19 examples, let's take a look at them. Then I	
	84:20 can say yes or no, but I don't know off the	
	84:21 top of my head.	
	84:22 BY MR. KENNEDY:	
	84:23 Q. Well, you recall the concept of	
	84:24 talking points at the HDA, do you not?	
85:2 - 85:2	Gray, John 07-30-2020 (00:00:00)	JG02.64
	85:2 A. Oh, yeah.	
85:3 - 85:5	Gray, John 07-30-2020 (00:00:02)	JG02.65
	85:3 BY MR. KENNEDY:	
	85:4 Q. Look at Exhibit 36, if you	
	85:5 would.	
85:10 - 85:10	Gray, John 07-30-2020 (00:00:01)	JG02.66
	85:10 A. 36. Okay.	
85:11 - 86:14	Gray, John 07-30-2020 (00:01:03)	JG02.67

85:11 BY MR. KENNEDY:

85:12 Q. Do you have that in front of

85:13 you?

85:14 A. I've got it, yeah.

85:15 Q. Look at the bottom e-mail.

85:16 There's a bottom e-mail from Pat Kelly,

85:17 again, over to one of the Big Three, over to

85:18 AmerisourceBergen.

85:19 Do you see that? And this is

85:20 2016.

85:21 A. Uh-huh.

85:22 Q. The subject is industry talking

85:23 points. Pat Kelly at HDA states: Not sure

85:24 my previous e-mail got through from my phone.

85:25 Hopefully the attached Word document is

86:1 accessible.

86:2 A. Right.

86:3 Q. As agreed upon by the companies

86:4 that crafted these talking points, this is

86:5 not a public document and is not intended to

86:6 be a leave-behind. These are simply

86:7 agreed-upon talking points to be used by

86:8 staff in settings where we are called upon to

86:9 explain the role of distributors.

86:10 And then we have some talking

86:11 points.

86:12 A. Okay.

86:13 Q. And if you -- if you'll go to

86:14 99, down in the bottom right-hand corner.

87:2 - 87:19

Gray, John 07-30-2020 (00:00:41)

JG02.68

87:2 Q. Bates 99. I'm under Industry

87:3 Actions.

87:4 A. Oh, okay. I'm sorry. I didn't

87:5 see that heading up there. Yep, okay.

87:6 Q. It states, as a talking point:

87:7 As pharmaceutical distributors, we take our

87:8 role in the pharmaceutical supply chain

87:9 seriously.

87:10 Next paragraph: We go to great

87:11 lengths to eliminate diversion within our

Page/Line	Source	ID
	87:12 part of the supply chain.	
	87:13 And that's consistent with the	
	87:14 public relations message we've been talking	
	87:15 about that the distributors are committed,	
	87:16 it's part of their mission to stop diversion,	
	87:17 correct?	
	87:18 A. Uh-huh.	
87:20 - 88:2	87:19 Q. Those are your talking points. Gray, John 07-30-2020 (00:00:25)	JG02.294
	87:20 Now, the firm that you hired,	
	87:21 the PR firm, APCO, they put together your	
	87:22 public relations messages in one document for	
	87:23 you folks in 2013. Do you recall that?	
	87:24 A. Not specifically, no, but if we	
	87:25 have them, we'll look at it.	
88:9 - 90:19	88:1 Q. Well, do you recall the Crisis 88:2 Playbook? Look at Exhibit 28. Gray, John 07-30-2020 (00:02:22)	JG02.69
	88:9 A. Crisis Playbook? I don't	
	88:10 recall the Crisis Playbook.	
	88:11 BY MR. KENNEDY:	
	88:12 Q. This is an e-mail from you in	
	88:13 2013, 4/25/13. John Gray, that's you up at	
	88:14 the top, right?	
	88:15 A. Yeah.	
	88:16 Q. Sending this out to -- looks	
	88:17 like to HDMA Government and Public Policy	
	88:18 Council.	
	88:19 Do you see that?	
	88:20 A. Yeah, I got it.	
	88:21 Q. McKesson, Cardinal and	
	88:22 AmerisourceBergen are part of that council?	
	88:23 I think we've already established that,	
	88:24 right?	
	88:25 A. Yeah.	
	89:1 Q. You state: A component of	
	89:2 HDMA's engagement with APCO, the public	
	89:3 relations firm, has involved analyzing the	
	89:4 risks and opportunities facing the industry,	
	89:5 mapping the industry's stakeholders and	

Page/Line

Source

ID

89:6 preparing response protocols for use in the
 89:7 event of a crisis.
 89:8 Attached to this note is the
 89:9 culmination of those efforts, a Crisis
 89:10 Playbook --
 89:11 A. Uh-huh.
 89:12 Q. -- that serves as an
 89:13 interactive guide to crisis communications.
 89:14 The playbook includes response procedures,
 89:15 best practices and the names and contact
 89:16 information of a cross-functional task force
 89:17 that has the authority to act quickly and
 89:18 decisively in response to critical
 89:19 reputational and crisis issues. While
 89:20 development -- while developed primarily for
 89:21 HDMA, the document can also serve as a tool
 89:22 for members -- which are distributors,
 89:23 correct?
 89:24 A. Uh-huh.
 89:25 Q. Correct?
 90:1 A. Correct. Yeah.
 90:2 Q. -- particularly as you may face
 90:3 scrutiny from the media as well as the
 90:4 legislators and regulators in the coming
 90:5 months on a range of issues, including
 90:6 prescription drug abuse and diversion.
 90:7 This is the Crisis Playbook,
 90:8 right? They tell you three or four times,
 90:9 this is in the event of crisis, correct?
 90:10 A. This is -- yeah, it's APCO's
 90:11 work, yeah.
 90:12 Q. And so we're clear, the crisis
 90:13 they're talking about here, this isn't the
 90:14 opioid crisis killing thousands of Americans
 90:15 a year, correct? They're talking about the
 90:16 crisis if a distributor happens to get sued
 90:17 by a municipality or a distributor has an
 90:18 enforcement action brought against them by
 90:19 the DEA. That's the crisis --

90:22 - 92:6

Gray, John 07-30-2020 (00:01:28)

JG02.70

Page/Line

Source

ID

90:22 A. No, I -- no, I don't agree with
 90:23 that at all. Actually, when they said
 90:24 crisis, they meant the entire -- the entire
 90:25 span of it, not just DEA, but the whole
 91:1 opioid crisis situation. Because the program
 91:2 is way more than just simply about DEA and
 91:3 enforcement or lack of enforcement. It's
 91:4 also about resolving the problems of opioid
 91:5 addiction and treatment.
 91:6 BY MR. KENNEDY:
 91:7 Q. Well, this -- this says here --
 91:8 A. It's a broad --
 91:9 Q. We're going to look at this
 91:10 document, and there's nothing in it about any
 91:11 way to decrease diversion. There's nothing
 91:12 in here on anything with respect to programs
 91:13 to treat the folks that are addicted.
 91:14 There's nothing in here about what you folks
 91:15 should do with respect to abuse. They're
 91:16 just telling people how to, quote, act
 91:17 quickly and decisively in response to
 91:18 critical reputational issues. That's what
 91:19 this is all about. Go look.
 91:20 A. Okay. My recollection on this
 91:21 document was that it was the straw dog that
 91:22 we threw out to see what it would look like.
 91:23 It actually -- I would say almost all of it
 91:24 was never implemented after August of 2013,
 91:25 and then what migrated out of that to when
 92:1 this gentleman left APCO, became Reservoir,
 92:2 was the program they had been currently
 92:3 operating under, which included the major
 92:4 section on the Allied Against Opioid Abuse
 92:5 program, and that actually is the bulk of
 92:6 that program.

92:9 - 93:12

Gray, John 07-30-2020 (00:00:58)

JG02.71

92:9 A. So this document was just a
 92:10 straw dog. It was never implemented in this
 92:11 form to this degree. As I say, we stood down
 92:12 in August of that year.

Page/Line

Source

ID

92:13 BY MR. KENNEDY:

92:14 Q. We already looked at who it was

92:15 sent to. Turn to the next page. Let's look

92:16 at the cover page of the Crisis Playbook.

92:17 A. Yeah.

92:18 Q. And they describe it as an

92:19 interactive guide to crisis communication,

92:20 right?

92:21 A. Yes.

92:22 Q. Look at the next page. This is

92:23 crisis quick reference information.

92:24 A. Yeah.

92:25 Q. This is the crisis -- again,

93:1 we're going to -- they outline the crisis

93:2 that they're talking about in the back, and

93:3 we'll take a look, but core crisis team, and

93:4 you're number one.

93:5 Do you see that?

93:6 A. Correct.

93:7 Q. They even give them your cell

93:8 number.

93:9 A. Yeah.

93:10 Q. If a distributor gets sued or

93:11 the DEA brings an enforcement action, they

93:12 can reach you on your cell number, right?

93:15 - 94:22

Gray, John 07-30-2020 (00:01:20)

JG02.72

93:15 A. I have no idea. See, this team

93:16 was never formed. It never went beyond this

93:17 piece of paper, and I have no idea what went

93:18 on in APCO's mind as far as putting this

93:19 together. I was -- you know, that was -- I

93:20 have no clue.

93:21 BY MR. KENNEDY:

93:22 Q. Sir, by this point in time, you

93:23 had paid APCO -- you don't know what's going

93:24 on in their mind, but at this point in

93:25 time --

94:1 A. Correct.

94:2 Q. -- the HDA had paid them a half

94:3 a million dollars to put together this

Page/Line

Source

ID

94:4 document, true? A half million?
 94:5 A. No, I don't think that's true.
 94:6 I don't think it's all that money. That was
 94:7 just only a portion, because the program was
 94:8 much more than this document. But the
 94:9 program never got initiated, so not all the
 94:10 money spent was spent on this.
 94:11 Q. Sir, one at a time. We're
 94:12 going to talk about the other program, but
 94:13 right now we're going to talk about this
 94:14 document.
 94:15 Go to page 76.
 94:16 A. 7 -- what number again?
 94:17 Q. 76, down in the bottom
 94:18 right-hand corner.
 94:19 A. I have 749. 760?
 94:20 Q. 776.
 94:21 A. What the hell is that? 77 --
 94:22 oh, 776, way back here. Hold on. Hold on.

94:23 - 96:14

Gray, John 07-30-2020 (00:01:46)

JG02.73

94:23 Okay.
 94:24 Q. Now, look at -- over in the
 94:25 right-hand column up at the top -- first,
 95:1 this is Scenario 2. So they're giving
 95:2 different crisis scenarios, and this is
 95:3 Scenario 2, Diversion Lawsuit. So this is
 95:4 under the circumstances where one of your
 95:5 distributors gets sued, correct? Diversion
 95:6 Lawsuit? And if you'll look --
 95:7 A. I -- go ahead.
 95:8 Q. -- over in the top right. Look
 95:9 over on the top right, if you would.
 95:10 A. I see it.
 95:11 Q. And this is the tough questions
 95:12 that a distributor might be asked, and your
 95:13 PR firm is telling them how to answer the
 95:14 tough questions -- questions that might come
 95:15 from somebody during a lawsuit: Isn't it
 95:16 true that these large publicly traded
 95:17 companies are making millions of dollars from

Page/Line	Source	ID
	95:18 diversion of prescription drugs, question	
	95:19 mark? Shouldn't patient safety be put before	
	95:20 profits?	
	95:21 And your PR firm is saying,	
	95:22 hey, if you get asked that question,	
	95:23 Mr. Distributor, you've got to answer:	
	95:24 Patient safety is put before profits.	
	95:25 That's the recommended answer,	
	96:1 true?	
	96:2 A. That's what this -- that's what	
	96:3 this says. Correct.	
	96:4 Q. So kind of summing up the PR	
	96:5 program that comes in place in 2012, we've	
	96:6 looked at it. The PR program is going to	
	96:7 include statements and representations and	
	96:8 the message that distributors are, number	
	96:9 one, committed to stopping diversion; number	
	96:10 two, it's part of their mission. And with	
	96:11 respect to this Crisis Handbook, part of the	
	96:12 message is we are always -- as a distributor,	
	96:13 we are always putting safety over profits,	
	96:14 correct? All --	
96:18 - 96:18	Gray, John 07-30-2020 (00:00:01)	JG02.74
	96:18 Q. -- messages that you remember?	
96:21 - 96:24	Gray, John 07-30-2020 (00:00:07)	JG02.75
	96:21 A. Yeah, I'm not going to put a	
	96:22 conclusion on that because you're mixing	
	96:23 apples and oranges through all this. So	
	96:24 these documents say what they say.	
97:15 - 97:21	Gray, John 07-30-2020 (00:00:26)	JG02.76
	97:15 Q. What I want to look at, I want	
	97:16 to look at how this PR message -- I want to	
	97:17 look at how this PR message lined up with	
	97:18 reality and what the distributors were	
	97:19 actually doing. Can we do that?	
	97:20 A. It's your deposition. Go	
	97:21 ahead.	
98:10 - 99:6	Gray, John 07-30-2020 (00:00:51)	JG02.77
	98:10 Q. Mr. Gray, when we took a break,	
	98:11 I was about to ask you and starting to look	

Page/Line

Source

ID

98:12 into the idea of how the public relations
98:13 program matched up with what actually was
98:14 going on in reality, right? So let's take a
98:15 look at that.

98:16 A. Okay.

98:17 Q. There was a congressional
98:18 hearing in March of 2012. I think we already
98:19 talked about that. You appeared at that
98:20 hearing, true?

98:21 A. True.

98:22 Q. And the title of the
98:23 congressional hearing was Prescription Drug
98:24 Diversion: Combatting the Scourge. Do you
98:25 recall that, kind of a colorful title?

99:1 A. No. Not specifically, no.

99:2 Q. Okay. After this hearing,
99:3 Congress sent the HDA a series of questions,
99:4 and that's not uncommon for Congress to do
99:5 that, true?

99:6 A. Yeah, that's usual routine.

99:13 - 100:10 **Gray, John 07-30-2020 (00:00:50)**

JG02.78

99:13 Q. Well, you folks took the
99:14 questions, the written questions from
99:15 Congress.

99:16 A. Yeah.

99:17 Q. The HDA formulated answers to
99:18 those questions, and then they were mailed
99:19 back to Congress?

99:20 A. Correct.

99:21 Q. All right. And the answers
99:22 that were formulated by the HDA staff, those
99:23 were reviewed by the regulatory affairs
99:24 committee and the federal government affairs
99:25 committee. Would that be the common course,
100:1 when you are proving written answers to
100:2 Congress?

100:3 A. It would depend upon the topic.

100:4 It may be in that case those were probably
100:5 the two most relevant groups.

100:6 Q. And McKesson, Cardinal and

Page/Line

Source

ID

100:7 AmerisourceBergen sit on those committees,
 100:8 true?
 100:9 A. I believe they did.
 100:10 Q. Let's look at Exhibit 10.
 100:16 - 104:2 **Gray, John 07-30-2020 (00:03:33)**
 100:16 Q. We're going to look at those
 100:17 questions and those answers from Congress.
 100:18 A. 10. 10, 10, 10, 10. Okay.
 100:19 Q. All right. This is April 6,
 100:20 2012.
 100:21 A. Yeah.
 100:22 Q. And addressed to The Honorable
 100:23 Mary Bono Mack in Congress?
 100:24 A. Yeah.
 100:25 Q. And this is a letter from you,
 101:1 and it says: Dear Chairwoman Bono Mack.
 101:2 Thank you for the opportunity to testify
 101:3 before the Subcommittee on Commerce,
 101:4 Manufacturing and Trade on March 1st, 2012 at
 101:5 the hearing entitled Prescription Drug
 101:6 Diversion: Combatting the Scourge.
 101:7 And then you tell her that you
 101:8 are attaching the HDA responses to the
 101:9 congressional questions, right?
 101:10 A. Correct.
 101:11 Q. Go to page 82 at the bottom.
 101:12 A. What page? I'm sorry. Which
 101:13 page?
 101:14 Q. Eight-two. Eight-two, down at
 101:15 the bottom.
 101:16 A. Oh, 82, the next page. Okay.
 101:17 Right.
 101:18 Q. One of the questions that they
 101:19 asked, and their question is in the bold, and
 101:20 then the HDA answer is below. They ask: Are
 101:21 there other red flags that distributors look
 101:22 for in their anti-diversion efforts?
 101:23 That was the question, right?
 101:24 A. Correct.
 101:25 Q. And then you state, consistent

JG02.79

Page/Line

Source

ID

102:1 with the PR message: Distributors take their
102:2 anti-diversion efforts extremely seriously
102:3 and focusing on quantities alone is
102:4 not sufficient -- is not sufficient to
102:5 identify potentially suspicious orders.
102:6 Consistent with everything
102:7 we've talked about, that's the message,
102:8 distributors are taking it seriously,
102:9 correct?
102:10 A. Yeah.
102:11 Q. Now, look down at the next
102:12 paragraph. We're going to talk about that
102:13 entire paragraph.
102:14 You next -- the HDA next states
102:15 to Congress: As part of their efforts -- and
102:16 that's the distributors -- as part of their
102:17 efforts to monitor for suspicious orders,
102:18 distributors may also ask for other
102:19 information that may either justify
102:20 particular customer ordering patterns or
102:21 indicate possible diversion. Number one, you
102:22 state things that distributors are looking
102:23 for, such as the percentage of controlled
102:24 substance purchases as compared to
102:25 noncontrolled substances. Secondly, the
103:1 variety and type of controlled substances
103:2 purchased. Third, the percentage of sales
103:3 reimbursed by insurance compared to cash
103:4 sales, and four, or the location of a
103:5 customer relative to other healthcare
103:6 entities such as hospitals or long-term care
103:7 facilities that would explain particular
103:8 ordering patterns.
103:9 That was your statement,
103:10 written statement to Congress, true?
103:11 A. Yeah, these were -- these were
103:12 the statements prepared by staff, correct.
103:13 Q. And sent to Congress, true?
103:14 A. They were sent to Mary Bono's
103:15 office.

Page/Line	Source	ID
	<p>103:16 Q. And these were reviewed by the</p> <p>103:17 regulatory affairs committee, they were</p> <p>103:18 reviewed by the federal government affairs</p> <p>103:19 committee, and Cardinal, AmerisourceBergen</p> <p>103:20 and McKesson all sit on those committees,</p> <p>103:21 correct?</p> <p>103:22 A. I don't -- I mean, unless you</p> <p>103:23 have something here that says those are the</p> <p>103:24 committees that did it, I, you know, would</p> <p>103:25 have to question whether they were. The only</p> <p>104:1 committees that looked at it, I don't know</p> <p>104:2 from this.</p>	
104:16 - 104:19	Gray, John 07-30-2020 (00:00:05)	JG02.80
	<p>104:16 Q. Well, you know what, look at</p> <p>104:17 Exhibit 9. 9 might be bigger and easier and</p> <p>104:18 it accomplishes the same thing.</p> <p>104:19 A. Okay.</p>	
104:24 - 106:20	Gray, John 07-30-2020 (00:01:46)	JG02.81
	<p>104:24 Q. Look at Exhibit 9. That's a</p> <p>104:25 little bit easier.</p> <p>105:1 A. Final draft.</p> <p>105:2 BY MR. KENNEDY:</p> <p>105:3 Q. Final draft, QFR responses,</p> <p>105:4 4/5/12.</p> <p>105:5 Do you see that?</p> <p>105:6 A. Yeah. Yeah.</p> <p>105:7 Q. It says To: Regulatory Affairs</p> <p>105:8 Committee and Federal Government Affairs</p> <p>105:9 Committee.</p> <p>105:10 Thank you all for your input</p> <p>105:11 and comments that we received on the draft</p> <p>105:12 responses to the questions for the record.</p> <p>105:13 Do you see that?</p> <p>105:14 A. My -- it's from Kristen Freitas</p> <p>105:15 to Kristen Freitas.</p> <p>105:16 Q. You see To: Regulatory</p> <p>105:17 Affairs --</p> <p>105:18 A. Oh, God, I'm not even looking</p> <p>105:19 at the header. My apologies. Yes, I see</p> <p>105:20 that at the top. Yeah, okay.</p>	

Page/Line

Source

ID

105:21 Q. Those two committees reviewed

105:22 these answers. Can we agree on that?

105:23 A. Yeah, I -- based on this, you

105:24 would think they did, yes.

105:25 Q. And McKesson, AmerisourceBergen

106:1 and Cardinal sat on those committees, did

106:2 they not?

106:3 A. I believe they did. You'd have

106:4 to check the rosters and who was in

106:5 attendance. I don't know.

106:6 Q. So you make the statement about

106:7 four different items the distributors looked

106:8 to in evaluating orders from pharmacies.

106:9 A. Correct.

106:10 Q. The statement is made to

106:11 Congress. We just read through those four

106:12 items.

106:13 A. Uh-huh.

106:14 Q. Let's look at McKesson first,

106:15 all right?

106:16 Despite your statement to

106:17 Congress that distributors compare controlled

106:18 substance percentages to noncontrolled

106:19 substances in evaluating pharmacies, despite

106:20 that statement --

106:25 - 107:3 **Gray, John 07-30-2020 (00:00:13)**

JG02.82

106:25 Q. Despite that statement to

107:1 Congress, McKesson was not monitoring

107:2 suspicious orders and looking at the

107:3 percentage of controlled substances, true?

107:11 - 108:22 **Gray, John 07-30-2020 (00:01:18)**

JG02.83

107:11 A. I cannot make any comments on

107:12 individual companies, never had access to

107:13 what they did or didn't do, and it would

107:14 be -- it just -- I have no insight into how

107:15 these companies did what they did on

107:16 suspicious ordering, none.

107:17 BY MR. KENNEDY:

107:18 Q. Sir, I -- so your answer is you

107:19 don't know?

107:20 A. I don't know, no.

107:21 Q. Did you sign the letter that

107:22 was sent to Congress with these answers, sir?

107:23 A. But I don't know if McKesson

107:24 does -- I don't know what individual

107:25 companies do. These are all voluntary

108:1 guidelines.

108:2 Q. Sir, my question is --

108:3 A. And I don't know what the

108:4 companies do, so I don't have that

108:5 information.

108:6 Q. My question is real simple.

108:7 Did you sign the letter that went to

108:8 Congress?

108:9 A. Well, my answer is real simple:

108:10 I don't know whether McKesson in particular

108:11 did or didn't do this. That would be for

108:12 McKesson to answer that question. We --

108:13 Q. Well, let me ask you, sir. I

108:14 understand, and I suppose that's my point.

108:15 This would be for McKesson to answer.

108:16 So when McKesson is sitting on

108:17 the committees that reviewed these answers,

108:18 knows and understands that that answer is not

108:19 truthful with respect to how they conduct

108:20 their business, did they tell you or anybody

108:21 else at the HDA that it was not true with

108:22 respect to McKesson? Did they tell you?

109:1 - 110:1

Gray, John 07-30-2020 (00:00:55)

JG02.84

109:1 A. Yeah, I mean, look, this is

109:2 what was represented to us. This is what we

109:3 sent in. Again, what individual companies

109:4 do, that's part and parcel of the way

109:5 association -- individual companies make

109:6 their own decisions, and I can't sit here and

109:7 say they do or they don't do it.

109:8 BY MR. KENNEDY:

109:9 Q. Sir, McKesson was the largest

109:10 distributor of opioids in the United

109:11 States --

Page/Line	Source	ID
109:12	A. That's fine. That may be true.	
109:13	Q. -- correct?	
109:14	A. That's numbers. I don't know	
109:15	if that's true either, frankly. I've never	
109:16	seen those numbers specifically by the	
109:17	company.	
109:18	Q. Well, by this point in the	
109:19	trial that will be into evidence, sir. It's	
109:20	not a dispute in this case.	
109:21	My point is this: Are you	
109:22	telling us that the largest distributor of	
109:23	opioids in this country who reviewed these	
109:24	answers never told you that this particular	
109:25	answer was untrue with respect to their	
110:1	company? Did they tell you that, yes or no?	
110:4 - 110:15	Gray, John 07-30-2020 (00:00:22)	JG02.85
110:4	A. I can't -- and I can't tell you	
110:5	whether they did or they didn't.	
110:6	BY MR. KENNEDY:	
110:7	Q. All right. Let's look at	
110:8	AmerisourceBergen with respect to this first	
110:9	response to Congress.	
110:10	Did you know and understand	
110:11	that AmerisourceBergen, the third-largest	
110:12	distributor in this country, they did not	
110:13	monitor orders by looking at this controlled	
110:14	versus noncontrolled percentage? Did they	
110:15	tell you that?	
110:18 - 111:2	Gray, John 07-30-2020 (00:00:18)	JG02.86
110:18	A. I have no knowledge of what --	
110:19	their day-to-day monitoring activities over	
110:20	the many warehouses they have. I do not	
110:21	know.	
110:22	BY MR. KENNEDY:	
110:23	Q. Well, we can agree with this,	
110:24	sir, that sitting on this committee,	
110:25	reviewing those answers, they would have	
111:1	known that this answer was not true with	
111:2	respect to how their company did business.	
111:8 - 112:12	Gray, John 07-30-2020 (00:01:08)	JG02.87

Page/Line

Source

ID

111:8 A. I wasn't the person in the
 111:9 company on the committee, so I don't know
 111:10 what their state of mind was when they were
 111:11 in the committee meeting.
 111:12 BY MR. KENNEDY:
 111:13 Q. Did you understand that if we
 111:14 put McKesson and AmerisourceBergen together,
 111:15 they distribute more than half of the opioids
 111:16 in this country?
 111:17 Do you understand that?
 111:18 A. You know, no, not particularly.
 111:19 I mean, I know what I have read in the paper,
 111:20 that's it, and I don't know whether those
 111:21 accusations are correct or not.
 111:22 Q. Well, let me ask this: Before
 111:23 you sent these answers to Congress, sir, did
 111:24 anybody, did you or anybody on your staff
 111:25 say, you know what, we'd better ask -- we'd
 112:1 better ask McKesson, we'd better ask
 112:2 AmerisourceBergen whether these answers are
 112:3 true before we send them over to Congress?
 112:4 Did anybody ask them that?
 112:5 A. I'd have to ask my staff who
 112:6 did the meeting. I do not know whether they
 112:7 did or didn't.
 112:8 Q. The next thing you told
 112:9 Congress, sir, was that distributors were
 112:10 looking at the type and variety of controlled
 112:11 substances that a pharmacy was purchasing
 112:12 when they were evaluating pharmacies.

112:16 - 112:19

Gray, John 07-30-2020 (00:00:09)

JG02.88

112:16 Q. My question is the same thing:
 112:17 Did you know that McKesson and
 112:18 AmerisourceBergen were not doing this in
 112:19 2012?

112:22 - 113:4

Gray, John 07-30-2020 (00:00:14)

JG02.89

112:22 A. as a trade
 112:23 association, we have no insight into what
 112:24 goes on day to day inside our companies.
 112:25 It's -- that's the company's business.

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
113:1 BY MR. KENNEDY: 113:2 Q. But yet you have no problem 113:3 sending representations and writing to 113:4 Congress; is that what you're telling us?	Gray, John 07-30-2020 (00:00:24)	JG02.90
113:7 A. We -- yeah, for what we knew at 113:8 the time, we believed these to be accurate 113:9 statements of what the companies supported 113:10 and did. 113:11 BY MR. KENNEDY: 113:12 Q. McKesson and AmerisourceBergen 113:13 sitting on both of those committees, 113:14 reviewing these answers, they would have 113:15 known the answers with respect to their 113:16 companies were not true as it relates to this 113:17 second item of due diligence, right? They 113:18 would have known it wasn't true.	Gray, John 07-30-2020 (00:00:00)	JG02.91
113:21 A. And again, it goes 113:22 back to --	Gray, John 07-30-2020 (00:00:07)	JG02.92
113:24 A. -- the individuals from those 113:25 companies who were on those committees. 114:1 That's a question that you would have to ask 114:2 them.	Gray, John 07-30-2020 (00:00:24)	JG02.93
115:11 Q. I'll ask you the 115:12 question. 115:13 Did you know at the time that 115:14 you sent these answers to Congress that 115:15 neither McKesson or AmerisourceBergen were 115:16 looking at the percentage of sales reimbursed 115:17 by insurance compared to cash sales? Did you 115:18 know that these two companies were not doing 115:19 that? 115:20 A. No. Again, we have no 115:21 knowledge what they do day to day.	Gray, John 07-30-2020 (00:00:34)	JG02.94
115:24 Q. Finally, sir, you represented 115:25 to Congress that distributors monitor		

Page/Line

Source

ID

116:1 suspicious orders by considering the
 116:2 locations of healthcare entities such as
 116:3 hospitals and nursing homes.
 116:4 Did you know that at the time
 116:5 these answers were sent, that was not true
 116:6 with respect to McKesson, the largest
 116:7 distributor in the country, and that was not
 116:8 true with respect to AmerisourceBergen, the
 116:9 third-largest distributor in the country, did
 116:10 you --

116:20 - 117:1

Gray, John 07-30-2020 (00:00:19)

JG02.95

116:20 A. And again, HDA or HDMA would
 116:21 not know whether that was true or not true.
 116:22 BY MR. KENNEDY:
 116:23 Q. Exactly. HDA wouldn't know,
 116:24 but McKesson and AmerisourceBergen, who are
 116:25 sitting on those two committees, reviewing
 117:1 these answers, they know it ain't true.

117:5 - 117:6

Gray, John 07-30-2020 (00:00:02)

JG02.96

117:5 Q. Right, sir? They know it's not
 117:6 true.

117:8 - 118:9

Gray, John 07-30-2020 (00:00:56)

JG02.97

117:8 A. No. You have to ask them that
 117:9 question. I'm not the guy to answer that
 117:10 one.
 117:11 BY MR. KENNEDY:
 117:12 Q. You attached -- look at that
 117:13 last sentence here. You attached the HDMA
 117:14 ICGs to your answers.
 117:15 Do you see that?
 117:16 A. Yep. Yep.
 117:17 Q. You thought those were so
 117:18 important that you would attach them to your
 117:19 answers to Congress. Is that what happened?
 117:20 A. I don't know if it was because
 117:21 they were so important, but they might have
 117:22 spoken to -- the content of those might have
 117:23 spoken to some of these issues. How
 117:24 important is a decision for someone else to
 117:25 make it. We thought it would be helpful.

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
118:1	Q. The ICGs were the industry	
118:2	compliance guidelines that the HDA created in	
118:3	2008, right?	
118:4	A. I think that's about the right	
118:5	time.	
118:6	Q. They were the guidelines to	
118:7	help distributors create their own internal	
118:8	guidelines and policies with respect to	
118:9	suspicious order monitoring, true?	
118:12 - 118:12	Gray, John 07-30-2020 (00:00:01)	JG02.98
118:12	A. That's the idea.	
118:17 - 118:19	Gray, John 07-30-2020 (00:00:07)	JG02.99
118:17	Q. When you attached these, did	
118:18	you tell Congress that they were not	
118:19	mandatory for distributors to follow them?	
118:22 - 119:4	Gray, John 07-30-2020 (00:00:18)	JG02.100
118:22	A. Well, yeah, HDA, as a trade	
118:23	association, cannot issue mandatory	
118:24	guidelines. That's an antitrust problem.	
118:25	All guidelines issued by all associations are	
119:1	strictly voluntary. They're there to help	
119:2	the members should the members choose to	
119:3	adopt them or use them. But they are all	
119:4	voluntary guidelines.	
119:11 - 119:12	Gray, John 07-30-2020 (00:00:03)	JG02.101
119:11	Q. My question is: Did you tell	
119:12	Congress these were not mandatory?	
119:18 - 119:25	Gray, John 07-30-2020 (00:00:18)	JG02.102
119:18	A. I don't -- I do not know the	
119:19	answer to that question.	
119:20	Q. And when you sent these and	
119:21	attached these guidelines, did you tell	
119:22	Congress that neither McKesson nor	
119:23	AmerisourceBergen were complying with these	
119:24	guidelines? Did you tell them that?	
119:25	A. We wouldn't know that.	
120:5 - 120:8	Gray, John 07-30-2020 (00:00:06)	JG02.103
120:5	Q. Were these guidelines ever	
120:6	updated after 2008?	
120:7	A. I believe they were updated one	

Page/Line	Source	ID
120:9 - 120:14	<p>120:8 time.</p> <p>Gray, John 07-30-2020 (00:00:17)</p> <p>120:9 Q. Sir, the fact of the matter is</p> <p>120:10 the HDA pulled these guidelines from its</p> <p>120:11 website in 2013 because the DEA was using the</p> <p>120:12 guidelines to hold distributors accountable</p> <p>120:13 for their failures to monitor suspicious</p> <p>120:14 orders. You pulled them from your website.</p>	JG02.104
120:17 - 120:17	<p>Gray, John 07-30-2020 (00:00:00)</p> <p>120:17 A. Yes.</p>	JG02.105
120:18 - 120:20	<p>Gray, John 07-30-2020 (00:00:02)</p> <p>120:18 BY MR. KENNEDY:</p> <p>120:19 Q. You pulled them?</p> <p>120:20 A. Yes.</p>	JG02.106
120:21 - 122:16	<p>Gray, John 07-30-2020 (00:01:49)</p> <p>120:21 Q. Go to page 84. Again, we're</p> <p>120:22 still on the answers that you sent to</p> <p>120:23 Congress. Go to page 84.</p> <p>120:24 A. Okay.</p> <p>120:25 Q. Congress asks you: Do you have</p> <p>121:1 any idea how frequently your members -- that</p> <p>121:2 would be distributors -- make such reports?</p> <p>121:3 They're talking about suspicious order</p> <p>121:4 reports, true?</p> <p>121:5 A. Well, let's read the rest of</p> <p>121:6 it. HDMA members report suspicious orders</p> <p>121:7 directly to DEA. Okay. So the second part</p> <p>121:8 of that answers the question. Yes.</p> <p>121:9 Q. So they asked -- Congress</p> <p>121:10 asked, do you have any idea how frequently</p> <p>121:11 your members, distributors, make such</p> <p>121:12 reports, and they're talking about suspicious</p> <p>121:13 order reports, true?</p> <p>121:14 A. Right.</p> <p>121:15 Q. And --</p> <p>121:16 A. Yes.</p> <p>121:17 Q. And they asked you about</p> <p>121:18 frequency, and your answer is: HDMA does not</p> <p>121:19 track this information. HDMA members report</p> <p>121:20 suspicious orders directly to the DEA.</p>	JG02.107

Page/Line	Source	ID
	121:21 Was that your answer?	
	121:22 A. That's our answer.	
	121:23 Q. So they ask you how frequently,	
	121:24 and you don't give them any kind of answer.	
	121:25 You just say it's not something we know, the	
	122:1 distributors report that to the DEA, true?	
	122:2 A. Well, if you do not track the	
	122:3 information, you don't know how frequently	
	122:4 it's reported.	
	122:5 Q. Well, again, did you ask the	
	122:6 distributors? Did you ask McKesson, hey, how	
	122:7 frequently do you report suspicious orders?	
	122:8 A. No.	
	122:9 Q. The answer is -- did you ask	
	122:10 McKesson?	
	122:11 A. No, because they can ask the	
	122:12 companies themselves. It's not HDA's place	
	122:13 to answer specific operational questions for	
	122:14 each member company. They're free to do that	
	122:15 at their own choosing, but it's not	
	122:16 appropriate for the association to do that.	
122:17 - 122:19	Gray, John 07-30-2020 (00:00:07)	JG02.108
	122:17 Q. McKesson reviewed these	
	122:18 answers. Didn't they say to the HDA, you	
	122:19 know, here's what we're reporting?	
122:24 - 123:7	Gray, John 07-30-2020 (00:00:19)	JG02.109
	122:24 A. Yeah, I mean, McKesson has	
	122:25 every right not to tell HDA what they're	
	123:1 doing, and they're free to do their own for	
	123:2 whatever competitive reasons they have that	
	123:3 they may not want other companies to know	
	123:4 what they do versus what they do. So it's	
	123:5 inappropriate for the HDA to be the sender of	
	123:6 that kind of information transfer. We do not	
	123:7 do it.	
123:9 - 123:17	Gray, John 07-30-2020 (00:00:29)	JG02.110
	123:9 Q. Okay. You've got McKesson,	
	123:10 largest distributor in the country. They're	
	123:11 reviewing your answers where you say, well, I	
	123:12 don't know how many orders get reported, and	

Page/Line	Source	ID
123:13 yet you understand that between 2006 and 123:14 2012, McKesson did not report a single -- not 123:15 even one suspicious order to the DEA in the 123:16 entire state of West Virginia for seven 123:17 years?		
123:23 - 123:24	Gray, John 07-30-2020 (00:00:03)	JG02.111
123:23 Q. Did McKesson tell you that 123:24 before you sent these answers back?		
124:2 - 124:18	Gray, John 07-30-2020 (00:00:42)	JG02.112
124:2 A. And it's not my place to ask 124:3 them. That is McKesson's business, and if 124:4 they wish to disclose that information, they 124:5 have every right to, but it's not appropriate 124:6 for a trade organization representing 124:7 competitors to share information about what 124:8 each company does. That's basic association 124:9 law. 124:10 BY MR. KENNEDY: 124:11 Q. We're going to look at some 124:12 later documents, sir. When McKesson finally 124:13 does start reporting in August of 2013, and 124:14 they ask you about how many orders are being 124:15 reported, when they are actually reporting, 124:16 you have no trouble telling Congress then, 124:17 right? 124:18 A. Say that again. You cut out.		
124:23 - 125:2	Gray, John 07-30-2020 (00:00:15)	JG02.113
124:23 In 2017, when McKesson now is 124:24 reporting orders, Congress asks you how many 124:25 orders are being reported, you have no 125:1 problem at that time telling Congress what's 125:2 being reported.		
125:3 - 125:10	Gray, John 07-30-2020 (00:00:14)	JG02.295
125:3 A. Numbers that are reported? 125:4 Q. You're not allowed, but you do. 125:5 A. Well, I'm not aware and I don't 125:6 recall that, so if you've got it, we'll look 125:7 at it. 125:8 Q. Let's look at Exhibit 4. 125:9 Exhibit 4 is the big bound exhibit,		

125:18 - 127:10

125:10 separately.

Gray, John 07-30-2020 (00:01:44)

JG02.114

125:18 Q. Do you have that in front of

125:19 you?

125:20 A. Yes, I see it.

125:21 Q. Do you remember this hearing?

125:22 A. Yes.

125:23 Q. This was an extensive hearing

125:24 in front of Congress that focused on

125:25 West Virginia.

126:1 Do you remember that?

126:2 A. Okay.

126:3 Q. They took testimony from

126:4 different employees of McKesson and Cardinal

126:5 and AmerisourceBergen and HD Smith. They

126:6 collected thousands of documents from all the

126:7 companies, and they had an extensive hearing,

126:8 and then they put together I think this

126:9 300-page report.

126:10 Do you remember this, sir?

126:11 A. Very generally, yes.

126:12 Q. Great. Go to page 373, Bates.

126:13 A. 373. Okay.

126:14 Q. Look at the top paragraph on

126:15 373.

126:16 A. Yeah.

126:17 Q. One second. We're waiting

126:18 for -- up top.

126:19 A. I've got it here.

126:20 Q. The second sentence says:

126:21 Between '06 and '12.

126:22 Do you see that sentence?

126:23 A. Yes.

126:24 Q. It says: Between 2006 and

126:25 2012, the years in which McKesson did not

127:1 submit any suspicious order reports to the

127:2 DEA, the company shipped more than

127:3 162.6 million doses of hydrocodone and

127:4 oxycodone to pharmacies in West Virginia.

127:5 A. Correct.

Page/Line	Source	ID
127:6	Q. 162 million doses, and not one	
127:7	single suspicious order report over seven	
127:8	years. And my question is: When McKesson	
127:9	reviewed your answers going to Congress, did	
127:10	they tell you this?	
127:13 - 127:14	Gray, John 07-30-2020 (00:00:03)	JG02.115
127:13	A. I -- I can't recall. I	
127:14	wouldn't know. I don't know.	
127:15 - 128:3	Gray, John 07-30-2020 (00:00:37)	JG02.296
127:15	BY MR. KENNEDY:	
127:16	Q. In addition to telling Congress	
127:17	about this suspicious order reporting, you	
127:18	also told the Wall Street Journal that	
127:19	distributors were reporting suspicious	
127:20	orders, didn't you?	
127:21	Do you recall that, sir?	
127:22	A. I'd have to see the article.	
127:23	It's been a long time.	
127:24	Q. Look at 43.	
127:25	A. Which one?	
128:1	Q. 43.	
128:2	A. That's the other book. 43.	
128:3	43. Okay.	
128:9 - 129:5	Gray, John 07-30-2020 (00:00:45)	JG02.116
128:9	Q. The Wall Street Journal,	
128:10	March 8th, 2013, John Gray, president and CEO	
128:11	down at the bottom?	
128:12	A. Uh-huh.	
128:13	Q. Look at the last paragraph.	
128:14	A. Yep.	
128:15	Q. You state to the Wall Street	
128:16	Journal: We remain committed -- and we would	
128:17	be the distributors and the HDA, right?	
128:18	A. Right.	
128:19	Q. We remain committed to playing	
128:20	our part by monitoring and reporting	
128:21	suspicious orders of prescription medicines.	
128:22	Do you see that statement?	
128:23	A. I see it.	
128:24	Q. At the time you sent this to	

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
128:25	the Wall Street Journal, you understand	
129:1	McKesson still -- it's been more than seven	
129:2	years, still has not reported a single	
129:3	suspicious order in the entire state of	
129:4	West Virginia?	
129:5	Did you understand that?	
129:9 - 129:11	Gray, John 07-30-2020 (00:00:03)	JG02.117
129:9	Q. Did you know that when you said	
129:10	this to the Wall Street Journal?	
129:11	A. No, we did not know that.	
129:15 - 129:18	Gray, John 07-30-2020 (00:00:08)	JG02.118
129:15	Q. McKesson, the largest	
129:16	distributor in the world, sits on your	
129:17	executive committee, and they probably	
129:18	reviewed this letter, right?	
129:21 - 130:1	Gray, John 07-30-2020 (00:00:08)	JG02.119
129:21	A. I can't say whether they did or	
129:22	they didn't.	
129:23	BY MR. KENNEDY:	
129:24	Q. Well, if they did, they would	
129:25	have known it wasn't true with respect to	
130:1	their company, correct?	
130:4 - 130:14	Gray, John 07-30-2020 (00:00:25)	JG02.120
130:4	A. No, not necessarily correct.	
130:5	BY MR. KENNEDY:	
130:6	Q. All right. Let's move on. And	
130:7	again, we're trying to look at the public	
130:8	relations representations about the industry	
130:9	being committed, it's part of their mission,	
130:10	they take diversion seriously. That's what	
130:11	we're doing, you understand that? We're	
130:12	trying to look at reality versus public	
130:13	relations.	
130:14	Do you understand that?	
130:17 - 132:22	Gray, John 07-30-2020 (00:02:06)	JG02.121
130:17	A. Yeah, I mean, that's -- I don't	
130:18	know what there is to understand. It's just	
130:19	your statement is what it is.	
130:20	BY MR. KENNEDY:	
130:21	Q. All right. Let's go to 2012.	

Page/Line

Source

ID

130:22 That's when APCO, the public relations firm,
130:23 gets hired. So at the same time that APCO
130:24 gets hired --
130:25 A. I'm sorry, where are you, what
131:1 exhibit?
131:2 Q. We're in 2012. No exhibit,
131:3 sir.
131:4 A. Oh, okay.
131:5 Q. 2012, about the same time that
131:6 APCO, the PR firm, gets hired --
131:7 A. Yeah.
131:8 Q. -- the HDA begins to have
131:9 discussions with the RAND Corporation about a
131:10 study. Do you recall the RAND Corporation?
131:11 A. Correct. I do.
131:12 Q. RAND Corporation, that's not a
131:13 PR firm, right?
131:14 A. No, I don't believe so.
131:15 Q. They're a respected worldwide
131:16 research organization, true?
131:17 A. I -- you know, maybe they are.
131:18 Maybe they aren't. I don't know for sure.
131:19 Q. The study that RAND was
131:20 proposing to the HDA, that was not a PR
131:21 campaign; that was an actual study to look
131:22 for some answers, true?
131:23 A. Oh, gosh. I haven't seen the
131:24 proposal for that in however many years it
131:25 was, eight, nine years ago. I don't know
132:1 exactly what we asked for.
132:2 Q. It wasn't a PR thing. We
132:3 can --
132:4 A. Well, no, that's your opinion.
132:5 I -- I don't know.
132:6 Q. You don't recall that they
132:7 wanted you folks to fund a study that would
132:8 actually look for solutions and answers to
132:9 this -- to the real crisis, the opioid
132:10 epidemic. That's what they wanted to do with
132:11 you folks.

Page/Line

Source

ID

132:12 Do you remember that?

132:13 A. No. I remember we talked with

132:14 them, but I do not remember the specifics of

132:15 what was going to be the scope and the

132:16 direction of the study. Because we didn't do

132:17 it, and so it just disappeared.

132:18 Q. They wanted to look for answers

132:19 to maybe find solutions and answers to save

132:20 lives. I mean, again, we'll talk about the

132:21 specifics, but that was the general thrust of

132:22 what they wanted to do. It was not PR.

133:2 - 133:9

Gray, John 07-30-2020 (00:00:21)

JG02.122

133:2 Q. Correct?

133:3 A. I don't know.

133:4 Q. Well, you do remember -- you do

133:5 remember that the HDA decided not to fund the

133:6 RAND study. Do you recall that?

133:7 A. Correct.

133:8 Q. Let's look at some detail.

133:9 35 -- or, excuse me, Exhibit 25, sir.

133:15 - 134:23

Gray, John 07-30-2020 (00:01:22)

JG02.123

133:15 A. 25. 25. 25. Let's see.

133:16 Where is it? Okay.

133:17 BY MR. KENNEDY:

133:18 Q. Exhibit 25 is an e-mail from

133:19 you, true, out to some folks at Cardinal?

133:20 A. That looks -- yeah, correct.

133:21 Q. And also to Jeff Eller at

133:22 PS Strategies. What is PS Strategies?

133:23 A. Yeah, that's a good question.

133:24 I do not know.

133:25 Q. This is an e-mail from you

134:1 July 11, 2012 over to Cardinal, right?

134:2 A. Yes, Connie Woodburn.

134:3 Q. Updated RAND proposal is the

134:4 subject?

134:5 A. Yeah.

134:6 Q. Look at page 21, so maybe this

134:7 will refresh your recollection. 21 down at

134:8 the bottom.

134:9 A. Yeah.

134:10 Q. You see Advisory Panel?

134:11 A. Yes.

134:12 Q. This is outlining the study

134:13 that RAND is proposing, and it says: Another

134:14 important aspect of the project is the

134:15 organizing of an expert advisory panel, both

134:16 to provide primary input on a range of

134:17 questions related to drug abuse and

134:18 diversion, and to review and strengthen the

134:19 eventual product -- eventual product, our

134:20 research.

134:21 Do you see that?

134:22 A. Let's see. Let me go down --

134:23 what line is that? Oh, you have it. Okay.

134:24 - 136:25

Gray, John 07-30-2020 (00:02:15)

JG02.297

134:24 Q. You see that?

134:25 A. Yeah.

135:1 Q. It's not a PR -- they're not

135:2 talking about doing a PR thing. We can agree

135:3 on that, sir?

135:4 A. No, I'm not going to agree on

135:5 that for sure, because I don't know where

135:6 this study was going to go, how it was going

135:7 to be used.

135:8 Q. Talking about setting up an

135:9 expert advisory panel to provide primary

135:10 input on a range of questions related to drug

135:11 abuse and diversion.

135:12 Do you see that?

135:13 A. Yeah. Yes.

135:14 Q. Let's look at your e-mail. So

135:15 you send the e-mail out, and you attach the

135:16 RAND proposal, and you're sending it over to

135:17 Cardinal, right?

135:18 A. Right.

135:19 Q. And you state: Connie and

135:20 Jeff: Attached is the latest RAND proposal.

135:21 I think they are still a bit squishy about

135:22 the million-dollar-plus funding. Seems they

Page/Line

Source

ID

135:23 expect us to provide most of it. Also, their
 135:24 timeline is longer than I thought it would
 135:25 be.

136:1 Now, this is important: In any
 136:2 event, I am sitting on this until we hear
 136:3 from the attorneys with respect to the
 136:4 West Virginia litigation to determine what
 136:5 role HDMA can or cannot play in that effort.
 136:6 A. Correct.

136:7 Q. We will have to decide whether
 136:8 or not the RAND initiative will be too little
 136:9 too late and whether or not it helps or
 136:10 hinders the West Virginia matter.
 136:11 Furthermore, will HDMA's
 136:12 resources be better applied to a much larger
 136:13 PR effort concerning both West Virginia and
 136:14 the rest of the states' attorneys generals to
 136:15 prevent the West Virginia litigation from
 136:16 spreading to other jurisdictions?
 136:17 Is that what you said to the
 136:18 Cardinal folks?

136:19 A. That's what it looks like.
 136:20 That document speaks for itself.
 136:21 Q. So, sir, you're questioning
 136:22 whether to fund the study that might find
 136:23 answers, might save lives, you're questioning
 136:24 that because it might hurt Cardinal's
 136:25 position in a lawsuit? Is that what you're

137:1 - 137:1

Gray, John 07-30-2020 (00:00:01)

JG02.298

137:1 suggesting?

137:5 - 137:24

Gray, John 07-30-2020 (00:00:46)

JG02.124

137:5 Q. Is that what you're saying?
 137:6 A. No. No, we're not saying that
 137:7 at all. That -- that wasn't the point of
 137:8 this memo. This was simply about, first of
 137:9 all, the million-dollar funding which was an
 137:10 issue because we didn't have that million
 137:11 dollars at the time. Secondly was, this was
 137:12 a bit late in -- we thought it might be a bit
 137:13 late in the game and the study would be of

Page/Line

Source

ID

137:14 little value to anybody.
 137:15 And again, at that point in
 137:16 time, ethics counsels for all the members,
 137:17 all 11 of them, you know, weren't sure what
 137:18 role they thought that the association should
 137:19 or shouldn't play in West Virginia.
 137:20 Q. Does this say we're going to
 137:21 sit on this to determine, quote, whether or
 137:22 not it helps or hinders the West Virginia
 137:23 matter? Is that your statement, sir?
 137:24 A. Yes.

138:5 - 138:23

Gray, John 07-30-2020 (00:00:42)

JG02.125

138:5 Q. You state here that you're
 138:6 concerned that this research study will
 138:7 happen, they'll come up with answers, and it
 138:8 might look like too little too late, and
 138:9 that's going to hurt in West Virginia. Is
 138:10 that what you state here, sir, too little too
 138:11 late?
 138:12 A. No, it says we'll have to
 138:13 decide whether or not the initiative will be
 138:14 too little too late or helps or hinders as to
 138:15 whether or not it's just, you know, either
 138:16 not the right information or whatever and
 138:17 it's just not going to be helpful in order to
 138:18 state the case of the members in their issues
 138:19 with West Virginia.
 138:20 Q. I think you indicate -- you
 138:21 kind of finish this off by saying, you know,
 138:22 let's look at this, but maybe we'll just do
 138:23 public relations, correct?

139:1 - 140:4

Gray, John 07-30-2020 (00:00:58)

JG02.126

139:1 A. Yeah, whether or not it was
 139:2 just -- rather than going through all of the
 139:3 effort to gather all this information,
 139:4 whether to just go in and change the dialogue
 139:5 about the mischaracterization of the members
 139:6 being pill mills and they're not -- it was an
 139:7 assumption that the manufacturers -- the
 139:8 wholesalers made the drugs and whether we

Page/Line

Source

ID

139:9 ought to just go in and correct that record.

139:10 BY MR. KENNEDY:

139:11 Q. Sir, you didn't fund the RAND

139:12 study, and --

139:13 A. No, we didn't.

139:14 Q. What did you say to me as to

139:15 why you didn't fund the RAND study, this

139:16 research project? Why did you not fund it?

139:17 A. Well, because it was not clear

139:18 whether it was going to be useful. It was

139:19 too little too late because their timeline

139:20 was too long and we thought by the time it

139:21 would come out, the litigation would have

139:22 moved on and it would be irrelevant.

139:23 Q. Sir, this is 2012 when you

139:24 state this, right?

139:25 A. Correct.

140:1 Q. Too little too late in 2012?

140:2 Do you know how many more people died in

140:3 West Virginia after 2012?

140:4 A. This was --

140:7 - 140:8

Gray, John 07-30-2020 (00:00:01)

JG02.127

140:7 A. -- strictly with respect to the

140:8 trials.

140:11 - 140:16

Gray, John 07-30-2020 (00:00:14)

JG02.128

140:11 Q. But this was a study to look

140:12 for answers and solutions to the opioid

140:13 epidemic. And you're concerned about how it

140:14 might affect a trial when these folks wanted

140:15 to find answers and solutions to the

140:16 epidemic, correct?

140:19 - 141:7

Gray, John 07-30-2020 (00:00:26)

JG02.129

140:19 A. No. No, that's not correct.

140:20 That's an overstatement, overbroad.

140:21 BY MR. KENNEDY:

140:22 Q. Okay. And again, why did you

140:23 say you decided not to move forward with

140:24 this?

140:25 A. I mean, best as I can recall, a

141:1 lot of it was money and a lot of it was the

Page/Line	Source	ID
	141:2 timing and, yeah, priority of what issues 141:3 would be most effective in helping the 141:4 members with the problems they had in 141:5 West Virginia. 141:6 Q. Look at Exhibit 26, if you 141:7 would.	
141:13 - 142:8	Gray, John 07-30-2020 (00:00:48) 141:13 Q. Let's look at why you didn't go 141:14 forward. Exhibit 26, this is an e-mail from 141:15 you, is it not? 141:16 A. Yes, it is. 141:17 Q. And this is sent over to 141:18 Mr. Paul Julian at McKesson. Who is Paul 141:19 Julian? 141:20 A. Again, group vice president -- 141:21 a group president of distribution. 141:22 Q. Subject, RAND study? 141:23 A. Yes. 141:24 Q. Here's what you state to 141:25 McKesson: Do you have a few moments over the 142:1 next several days to talk about the proposal 142:2 from RAND to study the drug diversion 142:3 problem. 142:4 This ain't PR; they want to 142:5 study the drug diversion problem. 142:6 A. Uh-huh. 142:7 Q. Is that correct, sir? Is that 142:8 what it says, drug diversion problem?	JG02.130
142:11 - 145:21	Gray, John 07-30-2020 (00:03:44) 142:11 A. That's what it says. 142:12 BY MR. KENNEDY: 142:13 Q. All right. Let me start over: 142:14 Do you have a few moments over the next 142:15 several days to talk about the proposal from 142:16 RAND to study the drug diversion problem and 142:17 possible alternative approaches for the 142:18 government to take dealing with the issue? 142:19 A. Uh-huh. 142:20 Q. The executive committee agreed 142:21 to fund the study during our last call on	JG02.131

Page/Line

Source

ID

142:22 June 2 teleconference with the belief that an
142:23 independent assessment -- independent
142:24 assessment of this problem will provide HDMA
142:25 and its members with a useful tool to argue
143:1 for alternative approaches to the current DEA
143:2 strategy of choking off the distribution
143:3 community in the hopes of stopping drug
143:4 diversion. I believe you had already left
143:5 the call by the time this issue was
143:6 discussed.
143:7 Now, you state, sir: The next
143:8 step was to get a formal contract from RAND
143:9 detailing the work, scope and development of
143:10 the report.
143:11 And then you state: Upon
143:12 reviewing their draft contract, we became
143:13 concerned about the ironclad language with
143:14 respect to the publication of the study and
143:15 our ability to control content. I think the
143:16 key here is when we can stop the report from
143:17 being published, assuming it reaches
143:18 conclusions not favorable to our industry.
143:19 Our outside counsel is currently evaluating
143:20 this situation. I would like to have your
143:21 thoughts about this effort since we have not
143:22 yet committed to anything.
143:23 I see the possible value -- let
143:24 me go back and read that again: I see the
143:25 possible value in a study like this if we can
144:1 prevent final publication of a study
144:2 unfavorable to our purposes; however, it also
144:3 falls in the old adage of never ask a
144:4 question you do not already know the answer
144:5 to.
144:6 Was that your e-mail to
144:7 McKesson, sir?
144:8 A. I'm sorry?
144:9 Q. Was that your e-mail to
144:10 McKesson?
144:11 A. That's the e-mail.

Page/Line

Source

ID

144:12 Q. Number one, if the distributors
 144:13 control the content, then it's not an
 144:14 independent study as they were proposing,
 144:15 true?
 144:16 A. You have to know -- mean by
 144:17 control the content. That's pretty standard
 144:18 for trade association reports, whether you're
 144:19 dealing with McKinsey, KPMG, Pricewaterhouse,
 144:20 it's the ability of the associations to,
 144:21 before final publication, to review and do
 144:22 edits, whether they be major, minor, and then
 144:23 you negotiate the edits with the consultant.
 144:24 That's standard -- standard association
 144:25 contracting process.

145:1 Q. Well, this negotiation with
 145:2 RAND was your negotiation that you wanted to
 145:3 be able to hide or bury the study if you
 145:4 didn't like the results, true?

145:5 A. And we do that -- we do that
 145:6 with all our studies, the -- if we get to the
 145:7 point we don't find it's useful or helpful or
 145:8 it misrepresents, then we want to be able to
 145:9 push back on the consultants and say, look,
 145:10 this is not accurate, not fair, whatever.
 145:11 And that's, again, standard procedure we've
 145:12 done with all our -- all our studies about
 145:13 any subject.

145:14 Q. Sir, then let me just back up
 145:15 so I can be real clear for the record. You
 145:16 said it's your standard practice at the HDA
 145:17 to insist that you have the right to bury the
 145:18 study if you don't like the results. That
 145:19 was my question, and is your answer that was
 145:20 your standard procedure? Is that your
 145:21 answer, sir?

145:24 - 146:2

Gray, John 07-30-2020

JG02.132

145:24 A. It -- yeah.

145:25 ///

146:1 BY MR. KENNEDY:

146:2 Q. Yes or no, is that your answer?

Page/Line	Source	ID
146:7 - 146:18	Gray, John 07-30-2020 (00:00:30) 146:7 A. I've answered it, I mean -- 146:8 BY MR. KENNEDY: 146:9 Q. You finished off this e-mail by 146:10 saying -- you reference this old adage. 146:11 A. Yeah. 146:12 Q. Never ask a question you do not 146:13 already know the answer to. And do you mean 146:14 never ask somebody if you're following the 146:15 law unless you know -- unless you know in 146:16 advance they're going to answer, yes, you're 146:17 following the law? Is that what you meant by 146:18 that?	JG02.133
146:21 - 147:9	Gray, John 07-30-2020 (00:00:31) 146:21 A. Yeah. No, it just means, you 146:22 know, until you have all the facts, make sure 146:23 you know what you're doing. 146:24 BY MR. KENNEDY: 146:25 Q. And, sir, I think you told us a 147:1 couple minutes ago that you didn't go forward 147:2 with the RAND study for a variety of 147:3 different reasons, but -- 147:4 A. Correct. 147:5 Q. -- the fact is, you didn't fund 147:6 this study because RAND refused to allow you 147:7 to bury the results if you didn't like them, 147:8 and that's why it didn't go forward, true? 147:9 A. No.	JG02.134
147:12 - 147:13	Gray, John 07-30-2020 (00:00:01) 147:12 A. It didn't go forward for 147:13 multiple reasons.	JG02.135
147:19 - 148:22	Gray, John 07-30-2020 (00:01:03) 147:19 Q. Let's move on. 147:20 A. There were multiple reasons, 147:21 multiple reasons for that failure. 147:22 Q. Let's move on. Partnership for 147:23 Drug Free America, they were another 147:24 organization that came to you, and they 147:25 wanted to do a study to look for answers and 148:1 solutions to the epidemic in this country to	JG02.136

Page/Line

Source

ID

148:2 save lives.

148:3 Do you remember that, sir?

148:4 A. You know, I really don't recall

148:5 we ever got -- I mean, that's the Partnership

148:6 for Drug Free? That's what it's called?

148:7 Q. Yes, sir.

148:8 A. Yeah, I -- you know, we

148:9 certainly, I certainly met with them, but I

148:10 don't recall exactly what we met about.

148:11 Unless it's documented somewhere, I don't

148:12 recall...

148:13 Q. This may -- this may help you

148:14 with your memory. Do you remember they

148:15 talked about putting together a blue ribbon

148:16 panel to study abuse, addiction and

148:17 diversion? Quote, blue ribbon panel, they

148:18 wanted to put together?

148:19 A. Okay.

148:20 Q. Do you recall that?

148:21 A. No. I definitely don't. Nope.

148:22 Q. Look at Exhibit 21.

149:2 - 149:15

Gray, John 07-30-2020 (00:00:29)

JG02.137

149:2 A. Okay.

149:3 BY MR. KENNEDY:

149:4 Q. And you're copied on this

149:5 e-mail, are you not?

149:6 A. Yep.

149:7 Q. It's 2012.

149:8 Can we just back up a second?

149:9 This is just a second.

149:10 A. Yeah.

149:11 Q. We're talking about RAND and

149:12 this indication that maybe it was too late,

149:13 and just so we can get an agreement, 2012,

149:14 it's not too late to save lives in

149:15 West Virginia in 2012, is it?

149:19 - 149:21

Gray, John 07-30-2020 (00:00:06)

JG02.138

149:19 Q. It wasn't too late to save

149:20 lives from overdoses --

149:21 A. Yeah, I --

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
149:25 - 150:1	Gray, John 07-30-2020 (00:00:04) 149:25 Q. -- in 2012. That's -- would 150:1 that be true? Can we just agree on that?	JG02.139
150:5 - 152:9	Gray, John 07-30-2020 (00:01:55) 150:5 Q. Sir, can we agree to that? 150:6 A. No, I'm not going to agree to 150:7 that necessarily, no. 150:8 Q. All right. 150:9 A. It's much more nuanced than 150:10 that. 150:11 Q. Let's look at a second proposal 150:12 to look for solutions. This one came from 150:13 Drug Free America. We have an e-mail from 150:14 Marcia Taylor at Drug Free to you. 150:15 Do you see that? 150:16 A. Yeah, I do. 150:17 Q. It's in 2012. 150:18 Do you see that? 150:19 A. Yeah, I see it. Yep. 150:20 Q. You'll see under Membership 150:21 Panel, that paragraph starts with "As we 150:22 discussed." 150:23 A. Yeah. 150:24 Q. She said to you: As we 150:25 discussed, a blue ribbon panel to examine the 151:1 supply chain needs to be high profile in 151:2 order to be effective. The partnership 151:3 envisions having two cochairs, one 151:4 Republican, one Democrat, to lead the effort. 151:5 Ideally, both would have strong law 151:6 enforcement credentials and excellent 151:7 reputations. The two individuals that we 151:8 have in mind are Larry Thompson, Deputy 151:9 Attorney General in the Bush Administration 151:10 under John Ashcroft and, until recently, 151:11 general counsel of Pepsi, and Phil Heymann, 151:12 Deputy Attorney General in the Clinton 151:13 Administration and currently a professor at 151:14 Harvard Law School. To round out the panel 151:15 we believe we need several different	JG02.140

Page/Line	Source	ID
	151:16 perspectives represented.	
	151:17 Then they talk about a doctor,	
	151:18 an addiction specialist, a business expert,	
	151:19 pharmacist, hospital administrator and a	
	151:20 former DEA personnel.	
	151:21 Do you see that?	
	151:22 A. Yes.	
	151:23 Q. So they're talking	
	151:24 about getting the HDMA to fund clearly what	
	151:25 they describe as a high-profile panel, true?	
	152:1 A. I don't know if they were	
	152:2 asking -- were they asking us to fund it	
	152:3 completely?	
	152:4 Q. They were asking you to fund it	
	152:5 in the tune of \$200,000, which your executive	
	152:6 committee agreed upon and then withdrew their	
	152:7 funding.	
	152:8 Do you recall that?	
	152:9 A. Okay.	
152:12 - 153:2	Gray, John 07-30-2020 (00:00:35)	JG02.141
	152:12 A. I don't actually -- no, I	
	152:13 really don't recall.	
	152:14 THE WITNESS: Sorry.	
	152:15 BY MR. KENNEDY:	
	152:16 Q. Again, from based upon this	
	152:17 e-mail, what they're talking about is a high	
	152:18 profile, what they consider to be a blue	
	152:19 ribbon panel. We can agree on that? Yes?	
	152:20 A. Yes, that's a correct	
	152:21 statement.	
	152:22 Q. This proposal was sent to the	
	152:23 executive committee. Do you remember that,	
	152:24 sir?	
	152:25 A. Actually, honestly no. I don't	
	153:1 remember. I don't recall.	
	153:2 Q. Let's look at Exhibit 24.	
153:3 - 153:3	Gray, John 07-30-2020 (00:00:02)	JG02.142
	153:3 A. Let's go to that.	
153:9 - 154:15	Gray, John 07-30-2020 (00:01:13)	JG02.143
	153:9 Q. Exhibit 24, these are the	

Page/Line

Source

ID

153:10 minutes from the executive committee

153:11 meeting --

153:12 A. Yep.

153:13 Q. -- down in San Antonio Hill

153:14 Country, San Antonio Hill Country, June --

153:15 A. Correct.

153:16 Q. -- 10th, 2012. And if you'll

153:17 go to page 35.

153:18 A. Yep.

153:19 Q. Last sentence -- last sentence

153:20 under Prescription Drug Abuse, Diversion and

153:21 DEA starts with President Gray.

153:22 Do you see that?

153:23 A. Yes.

153:24 Q. It says: President Gray

153:25 reported that the \$200,000 previously

154:1 approved by the executive committee to work

154:2 with the Partnership for a Drug Free America

154:3 likely will be applied instead to other

154:4 DEA-related activities and he will keep them

154:5 posted.

154:6 Do you see that, sir?

154:7 A. I do.

154:8 Q. You decided not to fund this

154:9 proposal?

154:10 A. So it appears.

154:11 Q. The RAND study was going to

154:12 look for answers. You did not fund that.

154:13 The Partnership for Drug Free America

154:14 proposal study wanted to look for answers.

154:15 That also was not funded, true?

154:18 - 154:18

Gray, John 07-30-2020 (00:00:00)

JG02.144

154:18 A. That's true.

154:21 - 155:20

Gray, John 07-30-2020 (00:01:17)

JG02.145

154:21 Q. And when you said in these

154:22 minutes that the money was going to go to

154:23 other DEA activities, that money, that

154:24 \$200,000, went to APCO two months later at

154:25 the direction of the executive committee.

155:1 Do you recall that, sir?

Page/Line

Source

ID

155:2 A. No, I do not.
 155:3 Q. To put it in context, at this
 155:4 point in time, while the HDA is deciding not
 155:5 to fund RAND and deciding not to fund the
 155:6 study by a Drug Free America, your PR message
 155:7 to Congress, to the Senate, to the state
 155:8 legislatures, to the media is that the
 155:9 distributors are committed, it's part of
 155:10 their mission to combat abuse, diversion and
 155:11 addiction. That's all going on at the same
 155:12 time, correct?
 155:13 A. Well, based on --
 155:14 Q. 2012?
 155:15 A. -- what you read in the
 155:16 testimony statement, that stands for itself.
 155:17 Q. Let's go to West Virginia.
 155:18 Let's look at how committed the HDA and the
 155:19 industry -- the distributors were to stopping
 155:20 diversion. Let's go to West Virginia.

155:21 - 156:19

Gray, John 07-30-2020 (00:00:50)

JG02.299

155:21 The West Virginia AG in 2012, I
 155:22 think we agreed, filed a lawsuit against
 155:23 various distributors, true?
 155:24 A. True.
 155:25 Q. In 2015 that lawsuit had
 156:1 progressed, true?
 156:2 A. I can't really recall the
 156:3 timelines on that.
 156:4 Q. Well, you recall the timeline
 156:5 that by 2015 the legal and the public
 156:6 relations problems in West Virginia got so
 156:7 bad that your distributors said you need to
 156:8 do something in West Virginia, we can't
 156:9 ignore it any longer.
 156:10 Do you remember that in 2015,
 156:11 sir?
 156:12 A. No, that wasn't the nature of
 156:13 the conversation at all. But that's...
 156:14 Q. We're going to look at the
 156:15 conversation, all right? Sir, by 2015, the

Page/Line

Source

ID

156:21 - 158:1	<p>156:16 media was reporting that your distributors 156:17 were pouring millions of opioids into 156:18 West Virginia. That's what the media was 156:19 saying in 2015, true?</p> <p>Gray, John 07-30-2020 (00:01:08)</p> <p>156:21 A. If that's what the media said, 156:22 but whether it's true or not, another matter. 156:23 BY MR. KENNEDY: 156:24 Q. Senator Manchin from 156:25 West Virginia, in 2015, he demanded that the 157:1 distributors make public the numbers of the 157:2 opioids that they were pumping into 157:3 West Virginia. He was demanding that in 157:4 2015. 157:5 Do you recall that? 157:6 A. No, I don't. 157:7 Q. Do you recall, sir, that by 157:8 2015 there were more deaths per capita in 157:9 West Virginia from prescription drug 157:10 overdoses than any other state in the country 157:11 by 2015? 157:12 A. I've heard that statistic. I 157:13 couldn't relate it to one year or another. 157:14 Q. Things got so bad from a PR 157:15 standpoint and a legal standpoint in 157:16 West Virginia that your members, your 157:17 distributors, demanded that something be done 157:18 in West Virginia. 157:19 Do you recall that, the 157:20 executive committee, something's got to be 157:21 done in West Virginia. Do you recall that in 157:22 2015? 157:23 A. Not specifically, but could 157:24 have been. 157:25 Q. 31. Go to 31, if you would, 158:1 please.</p>	JG02.146
158:7 - 160:8	<p>Gray, John 07-30-2020 (00:02:13)</p> <p>158:7 Q. Executive committee minutes 158:8 from June 7, 2015, true? 158:9 A. Yeah.</p>	JG02.147

158:10 Q. Go to page 96.

158:11 A. Yep. II(B).

158:12 Q. Yep, II(B), West Virginia

158:13 Litigation (Executive Committee Meeting

158:14 Materials), and then some materials were

158:15 attached.

158:16 Do you see that?

158:17 A. Right.

158:18 Q. And then it states:

158:19 Mr. Gray -- that's you -- and John Parker,

158:20 HDMA senior vice president, communications,

158:21 provided background on litigation in

158:22 West Virginia filed in 2012 against 13

158:23 distributors, 11 of whom are HDMA members.

158:24 Right?

158:25 A. That's what it says.

159:1 Q. Now, go to the last sentence

159:2 that starts way over on the right with

159:3 Ms. Janet Goss.

159:4 Do you see that?

159:5 A. Uh-huh.

159:6 Q. Ms. Janet Goss, GMMB -- that's

159:7 a public relations firm, right?

159:8 A. That's our firm.

159:9 Q. She discussed how HDMA could

159:10 engage the media to the industry's benefit,

159:11 including a three-level strategy. Following

159:12 discussion, there was general agreement that

159:13 HDMA needs to engage the media. Toward that

159:14 end, HDMA staff and GMMB will redefine Level

159:15 1, taking a strong and visible role in the

159:16 passage of S.483; engaging in proactive and

159:17 reactive media outreach with other

159:18 stakeholders in West Virginia to offer deep

159:19 background briefings, and Level 2 -- and this

159:20 is what I want to focus on. This is what was

159:21 being proposed for West Virginia.

159:22 Level 2, convening a

159:23 public/private summit to address relevant

159:24 issues with key stakeholders and reaching out

Page/Line

Source

ID

159:25 to Senator Manchin and staff.

160:1 Do you see that?

160:2 A. Yep. Yep.

160:3 Q. So part of what's being

160:4 proposed in West Virginia isn't just public

160:5 relations. They're also talking about

160:6 convening a public/private summit to address

160:7 the issues.

160:8 A. Uh-huh.

160:9 - 160:22

Gray, John 07-30-2020 (00:00:45)

JG02.300

160:9 Q. And, sir, by July of 2015, the

160:10 HDA formed what it called, quote, the HDMA

160:11 West Virginia Task Force.

160:12 Do you recall that, the

160:13 executive committee formed a task force

160:14 absolutely and directly focusing on

160:15 West Virginia. Do you see that? Do you

160:16 remember that?

160:17 A. I remember that.

160:18 Q. The first meeting of this

160:19 West Virginia Task Force was scheduled for

160:20 August of 2015. Do you recollect that?

160:21 A. Not specifically, no.

160:22 Q. Give me Exhibit 34.

161:5 - 166:24

Gray, John 07-30-2020 (00:05:47)

JG02.148

161:5 Q. 34 is an e-mail from John

161:6 Parker to required attendees, and there's a

161:7 whole lot of people from McKesson, Cardinal

161:8 and AmerisourceBergen on this e-mail chain.

161:9 Can we agree?

161:10 A. Uh-huh.

161:11 Q. You're in the chain?

161:12 A. Smith Drug, HD Smith Drug,

161:13 yeah, a number of --

161:14 Q. That's not what I asked you,

161:15 sir.

161:16 A. A number of firms.

161:17 Q. Actually, you've got

161:18 AmerisourceBergen, McKesson, Cardinal,

161:19 Cardinal, McKesson, Cardinal, McKesson,

Page/Line

Source

ID

161:20 AmerisourceBergen, AmerisourceBergen,
161:21 McKesson, AmerisourceBergen,
161:22 AmerisourceBergen, Cardinal, McKesson,
161:23 AmerisourceBergen.
161:24 So they're well represented on
161:25 this West Virginia Task Force, are they not?
162:1 A. Yeah. Smith Drug, HD Smith,
162:2 they're both well represented.
162:3 Q. Subject: HDMA West Virginia
162:4 Task Force call scheduled for August 7, 2015,
162:5 true?
162:6 A. Okay.
162:7 Q. The first sentence: We are
162:8 looking forward to our call on Friday
162:9 afternoon. And attached to this is a
162:10 PowerPoint to help the West Virginia Task
162:11 Force in their first meeting.
162:12 Do you see that?
162:13 A. Yeah.
162:14 Q. Go to page 74, if you would.
162:15 A. Okay.
162:16 Q. Turning the Tide in
162:17 West Virginia?
162:18 A. Yeah.
162:19 Q. That's the caption, the title?
162:20 A. Yes. Okay.
162:21 Q. Go to page 81, if you would.
162:22 A. Sure. 81, okay.
162:23 Q. This is recommended strategy
162:24 for the West Virginia Task Force, true?
162:25 A. Let's look at it first.
163:1 Q. Does the title say Recommended
163:2 Strategy?
163:3 A. I'm reading it. I'm reading
163:4 it. Hold on.
163:5 Q. So is my answer yes, the title
163:6 says Recommended Strategy?
163:7 A. No, the answer is I'm reading
163:8 it. Just a moment. Okay.
163:9 Q. Recommended Strategy, the last

163:10 bullet point -- remember, I said I wanted to
163:11 focus on this one. The last bullet point is:
163:12 Convene a closed-door summit. Hold a
163:13 closed-door summit to address the problem
163:14 with key stakeholders.

163:15 That was part of the strategy,
163:16 true?

163:17 A. That's what it says.

163:18 Q. Go to page 89, if you would.

163:19 We get a little more detail on this
163:20 closed-door summit and what was --

163:21 A. Okay. 89. Wait a minute.

163:22 Wait a minute. I'm missing something here.

163:23 Page 4 of that. Okay.

163:24 Q. See number 5 where it says:

163:25 Convene a summit?

164:1 A. Correct.

164:2 Q. And does it state HDMA can show
164:3 proactive leadership and help change public
164:4 attention on prescription drug abuse by
164:5 convening a summit to address the problem
164:6 with key stakeholders. The summit would --
164:7 Then look to (d). You see

164:8 (d) --

164:9 A. Yeah.

164:10 Q. -- in the list of what the
164:11 summit was going to do? It says this summit
164:12 being proposed: Address three main topics or
164:13 answer three main questions determined by
164:14 HDMA and/or other stakeholders on what needs
164:15 to be done to better prevent abuse and
164:16 diversion.

164:17 Is that what it says, sir?

164:18 A. Correct.

164:19 Q. This summit that was being
164:20 proposed in West Virginia, it was going to
164:21 look for solutions, for answers, true?

164:22 A. Well, I mean, it -- this -- (d)
164:23 speaks for itself.

164:24 Q. All right. That was being

Page/Line

Source

ID

164:25 proposed. So the first meeting scheduled --

165:1 first meeting is scheduled for August 7th.

165:2 A. Uh-huh.

165:3 Q. And this plan, this proposal to

165:4 convene a summit that was going to look for

165:5 answers, that was never carried out, true?

165:6 Just like RAND, just like Drug Free.

165:7 A. Correct.

165:8 Q. This proposal to convene a

165:9 summit to look for answers to problems of

165:10 diversion and abuse in West Virginia never

165:11 happened, true?

165:12 A. It did not happen.

165:13 Q. In fact, the very first meeting

165:14 of the West Virginia Task Force scheduled for

165:15 August 7, 2015, the very first meeting was

165:16 canceled, true?

165:17 A. That's correct.

165:18 Q. In fact --

165:19 A. I'm not sure it was ever

165:20 scheduled, but okay, whatever.

165:21 Q. It was canceled on one-day's

165:22 notice, right?

165:23 A. I don't think so. I think it

165:24 was like 30 days' notice. In my recollection

165:25 it was 30 days, but --

166:1 Q. 30 days?

166:2 A. Yeah, the meeting didn't

166:3 happen.

166:4 Q. In fact, this West Virginia

166:5 Task Force was disbanded even before its very

166:6 first meeting, true?

166:7 A. You know, I don't remember if

166:8 it was disbanded at all. I mean, elements of

166:9 it -- I don't know. I don't remember the

166:10 exact process that went on around then. I

166:11 don't recall.

166:12 Q. Sir, the fact of the matter is

166:13 the first meeting was canceled the day before

166:14 it ever happened. The task force was

Page/Line

Source

ID

166:15 disbanded --

166:16 A. Well, I will -- we'll agree to

166:17 disagree about the day before unless you have

166:18 a date telling me that. But I don't recall.

166:19 I thought it was canceled long before that.

166:20 Q. Sir, this West Virginia Task

166:21 Force was disbanded, never mentioned again,

166:22 West Virginia and its problems completely and

166:23 totally went away, was never mentioned

166:24 again --

167:3 - 167:4

Gray, John 07-30-2020 (00:00:01)

JG02.149

167:3 Q. Is that your understanding,

167:4 sir?

167:7 - 167:16

Gray, John 07-30-2020 (00:00:27)

JG02.150

167:7 A. Well, I think it's an

167:8 overstatement to say never mentioned again.

167:9 But that's just my recollection.

167:10 BY MR. KENNEDY:

167:11 Q. And the plan -- the plan to

167:12 convene a summit to look for answers in

167:13 West Virginia never occurred.

167:14 A. The summit never occurred. We

167:15 took other tactics.

167:16 Q. Look at Exhibit 35.

167:22 - 168:24

Gray, John 07-30-2020 (00:00:57)

JG02.151

167:22 Q. This is an e-mail from John

167:23 Parker --

167:24 A. Okay. There it is. There's

167:25 your day before.

168:1 Q. You have an e-mail from John

168:2 parker to you, December 19, 2017.

168:3 Do you see that?

168:4 A. Correct.

168:5 Q. Second paragraph starts with

168:6 "The West Virginia Task Force."

168:7 Do you see that?

168:8 A. Yep. Yep.

168:9 Q. Does it state: The

168:10 West Virginia Task Force I created with GMMB

168:11 in the summer of 2015 was disbanded --

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
	168:12 A. Yep.	
	168:13 Q. -- the day before its first	
	168:14 meeting in August due to, quote,	
	168:15 discoverability issues raised by a member.	
	168:16 A. Right.	
	168:17 Q. The status of the effort was	
	168:18 never raised at the 2015 board meeting and	
	168:19 never resurrected in concept again.	
	168:20 Did I read that correctly? Did	
	168:21 I read that correctly?	
	168:22 A. Yeah, that's what it says.	
	168:23 Q. The problems in West Virginia	
	168:24 didn't go away, did they, sir, after 2012?	
169:2 - 169:2	Gray, John 07-30-2020 (00:00:01)	JG02.152
	169:2 A. You know, I can't comment --	
169:5 - 169:11	Gray, John 07-30-2020 (00:00:16)	JG02.153
	169:5 A. Yeah, I can't comment on that.	
	169:6 BY MR. KENNEDY:	
	169:7 Q. Sir, let's put this in context.	
	169:8 Let's put it in context. People in	
	169:9 West Virginia are suffering more than any	
	169:10 other state in the country from this opioid	
	169:11 epidemic in 2012, right?	
169:14 - 169:15	Gray, John 07-30-2020 (00:00:03)	JG02.154
	169:14 A. Yeah, that's a conclusion I	
	169:15 can't reach. But go ahead.	
170:6 - 170:9	Gray, John 07-30-2020 (00:00:12)	JG02.155
	170:6 Q. the plan to	
	170:7 actually do something in West Virginia was	
	170:8 terminated because somebody was worried that	
	170:9 someone might find out what they were doing?	
170:14 - 171:20	Gray, John 07-30-2020 (00:01:17)	JG02.156
	170:14 A. My recollection is trial	
	170:15 counsels for a number of the members felt	
	170:16 that there was no way to maintain privilege	
	170:17 and communications in doing any of this	
	170:18 effort, and it was the outside trial	
	170:19 counsels, in my recollection, that said	
	170:20 please don't do this.	
	170:21 Q. Sir --	

Page/Line

Source

ID

170:22 A. Because they were in settlement
 170:23 negotiations at the time with the State.
 170:24 That was my -- that's what I understood to be
 170:25 the situation.

171:1 Q. Do you remember when we looked
 171:2 back and we talked about it earlier, we
 171:3 talked about the Crisis Playbook, where your
 171:4 PR firm said, hey, if anybody ever asks, make
 171:5 sure you tell them that the distributors
 171:6 always put safety over money? Do you
 171:7 remember that, sir, we talked about that?

171:8 A. No, not really.

171:9 Q. Always put safety over money.
 171:10 So what we have here -- and
 171:11 again, you can correct me if I'm wrong, but
 171:12 the RAND study that was going to look for
 171:13 answers and save lives never went forward,
 171:14 the partnership study that was going to look
 171:15 for answers to try to save lives was never
 171:16 funded, and now the task force summit in
 171:17 West Virginia is canceled the day before it's
 171:18 supposed to get off the ground because you're
 171:19 worried about a lawsuit?

171:20 A. No.

171:25 - 172:6

Gray, John 07-30-2020 (00:00:19)

JG02.157

171:25 Q. Let me ask you, sir. Is
 172:1 that -- is that how you describe an industry
 172:2 that is committed, that it's part of their
 172:3 mission, that always puts safety over money?
 172:4 Is that how you would describe the industry
 172:5 that --

172:6 A. No.

172:10 - 173:4

Gray, John 07-30-2020 (00:01:05)

JG02.158

172:10 Q. Let's look at legislation.
 172:11 Let's look at legislation and see the
 172:12 industry's commitment to stopping diversion
 172:13 and abuse. We'll talk about the whys, but I
 172:14 just want to nail some things down.
 172:15 Rescheduling HCPs, hydrocodone
 172:16 combination products, the legislation to

Page/Line	Source	ID
	172:17 reschedule it from Schedule III to II?	
	172:18 A. Correct.	
	172:19 Q. And the HDMA, in its lobbying	
	172:20 efforts, they opposed that legislation, true?	
	172:21 A. We didn't oppose it. We wanted	
	172:22 an extended time to comply.	
	172:23 Q. Sir, let me back up a second.	
	172:24 Extended time to comply, you agree, do you	
	172:25 not, that HCP, hydrocodone products, you	
	173:1 would agree with me they were debilitating?	
	173:2 That category, that opioid was debilitating	
	173:3 to our communities.	
	173:4 You agree with that, don't you?	
173:7 - 173:11	Gray, John 07-30-2020 (00:00:08)	JG02.159
	173:7 A. Yeah, I'm not a pharmacist. I	
	173:8 really don't know.	
	173:9 BY MR. KENNEDY:	
	173:10 Q. Look at Exhibit 48, if you	
	173:11 would.	
173:12 - 173:16	Gray, John 07-30-2020	JG02.160
	173:12 (Whereupon, Deposition Exhibit	
	173:13 Gray-48, 11/14/13 HDMA Letter to	
	173:14 Woodcock, ABDCMDL06395949 -	
	173:15 ABDCMDL06395953, was marked for	
	173:16 identification.)	
173:17 - 175:13	Gray, John 07-30-2020 (00:02:01)	JG02.161
	173:17 A. Yeah.	
	173:18 BY MR. KENNEDY:	
	173:19 Q. You got 48?	
	173:20 A. I'm on it. Janet Woodcock.	
	173:21 Q. This is a letter by you.	
	173:22 A. Right.	
	173:23 Q. November 14, 2013, a letter by	
	173:24 you to Congress. Go to page 52.	
	173:25 A. Okay.	
	174:1 Q. The second paragraph under the	
	174:2 bolded "Impact."	
	174:3 A. Yeah.	
	174:4 Q. Second paragraph -- I know	
	174:5 you're not a pharmacist, but do you tell	

Page/Line

Source

ID

174:6 Congress: HDMA does not dispute the
 174:7 debilitating effects of diversion and abuse
 174:8 of hydrocodone combination products? Is that
 174:9 your statement, sir?
 174:10 A. Well, it's a statement of the
 174:11 organization, of the members. It's not my --
 174:12 necessarily my personal statement, but it
 174:13 reflects what was conveyed and what the
 174:14 message was they wanted to put in the letter
 174:15 to the FDA.

174:16 Q. Sir, what did you say -- did
 174:17 you tell me that the HDA did not oppose the
 174:18 rescheduling legislation of hydrocodone
 174:19 products? Did you say that?
 174:20 A. No, what I said is we asked for
 174:21 an extended time because the issue for our
 174:22 members, particularly our smaller members,
 174:23 was that there are only three vault companies
 174:24 in the United States, and the vaults required
 174:25 to hold the extra volume of product beyond
 175:1 the cage system they currently operated, it
 175:2 would probably take two -- minimally,
 175:3 24 months to even get the vaults into these
 175:4 warehouses so they could comply. And we're
 175:5 asking for extra time to comply.

175:6 Q. Answer my question, sir: The
 175:7 HDMA opposed the legislation --

175:8 A. I honestly can't remember
 175:9 whether we opposed it out of the block or
 175:10 not. But our suggestion was -- if they
 175:11 wanted to do this rescheduling, to give the
 175:12 companies time because limited product
 175:13 available to create the vault space.

175:17 - 175:18

Gray, John 07-30-2020 (00:00:03)

JG02.162

175:17 Q. Sir, look at Exhibit 24, if you
 175:18 would, please.

175:19 - 175:21

Gray, John 07-30-2020 (00:00:07)

JG02.301

175:19 A. Yep.

175:20 Q. These are executive committee
 175:21 meetings -- minutes from June 10, 2012.

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
175:22 - 176:19	Gray, John 07-30-2020 (00:00:49) 175:22 A. Okay. 175:23 Q. Go to page 35, please. 175:24 A. Yeah. 175:25 Q. And second paragraph starting 176:1 with Mr. Kelly. 176:2 A. Yep. 176:3 Q. Mr. Kelly reported that 176:4 controlled substance-related matters that 176:5 have played a prominent role in PDUFA process 176:6 include Senator Manchin's language to 176:7 reschedule hydrocodone combination products 176:8 from Schedule III to Schedule II. 176:9 A. Uh-huh. 176:10 Q. HDMA is opposing the amendment. 176:11 Do you see that, sir? 176:12 A. Correct. 176:13 Q. Does that refresh your 176:14 recollection? 176:15 A. Yeah. I mean, I think 176:16 initially we said, look, we can't do this 176:17 physically, so we opposed it. We can't do it 176:18 physically in the time the amendment 176:19 required, which was --	JG02.302
177:4 - 177:7	Gray, John 07-30-2020 (00:00:12) 177:4 Q. HDA was opposing legislation to 177:5 reschedule a drug that your organization has 177:6 admitted was debilitating to our communities. 177:7 That's what was going on, correct?	JG02.163
177:13 - 177:13	Gray, John 07-30-2020 (00:00:01) 177:13 Q. Is that correct, sir?	JG02.164
177:15 - 177:19	Gray, John 07-30-2020 (00:00:10) 177:15 A. Well, I disagree with the word 177:16 "admitted," but it was in the letter. 177:17 BY MR. KENNEDY: 177:18 Q. Is this what you call -- is 177:19 this what you call putting safety over money?	JG02.165
177:24 - 178:25	Gray, John 07-30-2020 (00:01:05) 177:24 A. Yeah, I'm not making value 177:25 judgments on that kind of comment.	JG02.166

Page/Line

Source

ID

178:1 BY MR. KENNEDY:

178:2 Q. All right. Let's talk about

178:3 disposal legislation. Disposal legislation,

178:4 that was legislation set up by the various

178:5 states whereby they would set up programs for

178:6 people to be able to dispose or return opioid

178:7 medications that they did not need to use.

178:8 That's what that legislation was all about,

178:9 true?

178:10 A. Very broadly speaking.

178:11 Q. All right. And you recall that

178:12 the HDA supported that type legislation, but

178:13 only if the distributors did not have to pay

178:14 for the disposal programs.

178:15 Do you recall that?

178:16 A. Not specifically, no. But I

178:17 remember we worked that issue hard, yep.

178:18 Q. You worked that issue hard so

178:19 that the distributors would not have to pay

178:20 for these disposal --

178:21 A. No. So we could figure out

178:22 what was the most practical logistical way to

178:23 do it, and that was an issue with the

178:24 pharmacies in particular.

178:25 Q. Give me Exhibit 57.

179:1 - 179:8

Gray, John 07-30-2020 (00:00:01)

JG02.167

179:1 (Whereupon, Deposition Exhibit

179:2 Gray-57, HDMA Federal Legislation

179:3 Priorities Related to Prescription

179:4 Drug Abuse, HDA_MDL_000145737 -

179:5 HDA_MDL_000145740, was marked for

179:6 identification.)

179:7 A. Okay.

179:8 BY MR. KENNEDY:

179:9 - 180:6

Gray, John 07-30-2020 (00:00:47)

JG02.168

179:9 Q. Do you see 57? This is

179:10 basically a summary prepared by the HDA with

179:11 respect to legislative issues.

179:12 Do you see that?

179:13 A. Yeah. This -- yep.

Page/Line

Source

ID

179:14 Q. Drug Disposal on the left. Do

179:15 you see that?

179:16 A. Uh-huh.

179:17 Q. Over to the right, HDMA

179:18 Recommendations/Policy Considerations column.

179:19 Do you see that?

179:20 A. Yes.

179:21 Q. Second paragraph -- and again,

179:22 you supported this, but second paragraph:

179:23 The issue of who pays for these disposal

179:24 programs remains. HDMA currently opposes

179:25 efforts to require wholesalers to pay for

180:1 these programs.

180:2 Do you see that?

180:3 A. Correct.

180:4 Q. So you were all for these very

180:5 important programs as long as you didn't have

180:6 to pay for them, true?

180:9 - 180:9

Gray, John 07-30-2020 (00:00:00)

JG02.169

180:9 A. No, we were all -- yeah, we

180:10 - 180:20

Gray, John 07-30-2020 (00:00:22)

JG02.170

180:10 supported the program, but unfortunately, the

180:11 programs being recommended were all

180:12 wholesaler based, and yet, the pharmacies are

180:13 the ones that were going to have to do the

180:14 collecting of the drugs, and the

180:15 manufacturing is -- there's three other

180:16 groups in the supply chain that should have

180:17 been involved, and the question from our

180:18 perspective was if we're going to be

180:19 involved, everybody else should be involved

180:20 because it is a supply chain, after all.

181:2 - 182:3

Gray, John 07-30-2020 (00:01:02)

JG02.171

181:2 Q. Sir, tax legislation. You

181:3 recall that West Virginia, 20 or more other

181:4 states proposed taxes, taxes on the sale of

181:5 opioids that would have impacted -- that

181:6 would have impacted distributors because they

181:7 would have to pay the tax.

181:8 Do you recall those pieces of

Page/Line

Source

ID

181:9 legislation?

181:10 A. Well, yes, but not your

181:11 characterization.

181:12 Q. The money from the tax was

181:13 going to go to treatment to people that were

181:14 addicted, true?

181:15 A. I don't think it was true in

181:16 every state. Some of them were talking about

181:17 general fund money.

181:18 Q. Okay. Can we agree that you

181:19 opposed the tax legislation in every state?

181:20 A. Eh, I'm not sure. I'm not sure

181:21 that's accurate.

181:22 Q. In the vast majority of states

181:23 you opposed --

181:24 A. Well, whatever.

181:25 Q. True?

182:1 A. There were -- there were states

182:2 we opposed it. There were states we worked

182:3 with compromise.

182:18 - 183:4

Gray, John 07-30-2020 (00:00:24)

JG02.172

182:18 Q. All right. Mr. Gray, we were

182:19 talking about the -- about legislation, state

182:20 and federal, and the HDA position with

182:21 respect to legislation.

182:22 But let me briefly talk about

182:23 the Marino-Blackburn legislation, federal

182:24 legislation. I'm certain you are familiar

182:25 with that.

183:1 A. Yep.

183:2 Q. The HDMA played a significant

183:3 role in getting that legislation passed.

183:4 Would that be true?

183:7 - 184:18

Gray, John 07-30-2020 (00:01:27)

JG02.173

183:7 A. True.

183:8 BY MR. KENNEDY:

183:9 Q. Yes, sir?

183:10 A. I said true.

183:11 Q. All right. I'm sorry. In

183:12 fact, you folks hired a third-party outside

Page/Line

Source

ID

183:13 lobbyist group to work directly on that
183:14 legislation, did you not?

183:15 A. Well, we have a number of them.

183:16 I don't know if they're hired just for that,
183:17 but they might have worked on it, I'm sure.

183:18 Q. Do you remember interviewing
183:19 different lobbyist organizations and trying
183:20 to find the lobbyist group that had the
183:21 strongest relationship with Congressman

183:22 Marino?

183:23 A. Well, I didn't personally. My
183:24 staff may have.

183:25 Q. When originally drafted, the
184:1 Marino legislation had a provision that
184:2 required pharmacists to undergo background
184:3 checks and drug tests. Do you remember that,
184:4 that piece of the legislation, as originally
184:5 drafted?

184:6 A. No.

184:7 Q. Do you recall the HDMA working
184:8 on behalf of chain pharmacies, national chain
184:9 pharmacies, to have that removed from that
184:10 legislation?

184:11 A. I do not.

184:12 Q. And can you agree with me that
184:13 it probably wasn't a bad idea, considering
184:14 what was going on in the United States at
184:15 that point in time, probably wasn't a bad
184:16 idea to have pharmacists required to have
184:17 background checks and drug tests? Not a bad
184:18 idea?

184:21 - 185:1 **Gray, John 07-30-2020 (00:00:08)**

JG02.174

184:21 A. I don't have an opinion --
184:22 Jesus. No, I don't -- I don't have an
184:23 opinion.

184:24 BY MR. KENNEDY:

184:25 Q. Pull up -- I'm sorry. Pull up

185:1 E-75 if you would.

185:6 - 185:9 **Gray, John 07-30-2020 (00:00:01)**

JG02.175

185:6 (Whereupon, Deposition Exhibit

Page/Line	Source	ID
185:10 - 187:6	<p>185:7 Gray-75, E-mail(s), ADBCMDL00277567, 185:8 was marked for identification.) 185:9 BY MR. KENNEDY: Gray, John 07-30-2020 (00:01:50) 185:10 Q. Okay. We're looking at the 185:11 second e-mail down from Kristen Freitas. 185:12 A. Yeah, Freitas. 185:13 Q. She's from the HDMA; is that 185:14 right? 185:15 A. Yes. 185:16 Q. And she sent an e-mail to Rita 185:17 Norton, right? And Rita Norton, do you know 185:18 who she was? 185:19 A. Yes, she was the head of 185:20 government affairs for AmerisourceBergen. 185:21 Q. Okay. First e-mail is below 185:22 that, one minute before. 185:23 Do you see that? 185:24 A. Yeah. 185:25 Q. And again, now we have Rita 186:1 Norton from AmerisourceBergen to the HDA, 186:2 right? 186:3 A. Yeah. 186:4 Q. And she says: Thanks, Kristen. 186:5 Do we know if NCPA and NACDS concerns were 186:6 addressed? 186:7 NCPA is the National Community 186:8 Pharmacist Association, right? 186:9 A. Correct. 186:10 Q. And NACDS is the National 186:11 Association of Chain Drug Stores, correct? 186:12 A. Correct. 186:13 Q. The HDA answers this inquiry 186:14 from AmerisourceBergen, and Freitas from the 186:15 HDA says: I spoke with NCPA -- that's the 186:16 pharmacy organization. 186:17 A. Uh-huh. 186:18 Q. And I spoke to NACDS -- that's 186:19 the national chain pharmacy organization -- 186:20 last week.</p>	JG02.176

Page/Line

Source

ID

186:21 A. Uh-huh.

186:22 Q. And they were pleased with the

186:23 most recent draft, that being last week's

186:24 draft, because it exempts pharmacists from

186:25 the background check and drug testing

187:1 requirements. I will circle back with them

187:2 today and keep them posted.

187:3 Do you remember these efforts

187:4 on behalf of the HDA and on behalf of the

187:5 pharmacists?

187:6 A. No, I don't.

187:14 - 189:4

Gray, John 07-30-2020 (00:01:19)

JG02.177

187:14 Q. Now, along the lines of how

187:15 committed distributors were to stopping

187:16 diversion, I want to talk to you a little bit

187:17 about the Masters Pharmaceuticals case.

187:18 You're certainly familiar with that case, are

187:19 you not?

187:20 A. Somewhat. It's been a long

187:21 time since I've gone through any of that, but

187:22 I remember at the time when it happened.

187:23 Q. Well, you recall that the DEA

187:24 brought an enforcement action against Masters

187:25 Pharmaceuticals, correct?

188:1 A. Correct.

188:2 Q. It ended up in the court

188:3 system, true?

188:4 A. True.

188:5 Q. Master's appealed to the United

188:6 States Court of Appeals in the District of

188:7 Columbia, and the HDMA wrote an amicus brief

188:8 in that case.

188:9 Do you recall that?

188:10 A. I do.

188:11 Q. And, in fact, the decision and

188:12 a review of the amicus brief was done by the

188:13 executive committee, which would have been

188:14 standard at the time, true?

188:15 A. Yeah, the board and the

188:16 executive committee probably would have both

Page/Line	Source	ID
	188:17 seen it.	
	188:18 Q. And certainly you saw it, true?	
	188:19 A. Yeah.	
	188:20 Q. You're a lawyer?	
	188:21 A. Yeah.	
	188:22 Q. True? All right.	
	188:23 I'm going to look at some of	
	188:24 the things that the HDA represented to this	
	188:25 Court of Appeals in Washington, D.C. Again,	
	189:1 within the framework -- within the framework	
	189:2 of the PR program that you folks are	
	189:3 committed to stopping diversion, all right?	
	189:4 Can we look at that?	
189:13 - 189:13	Gray, John 07-30-2020 (00:00:02)	JG02.178
	189:13 Q. Exhibit 59, sir.	
189:14 - 189:19	Gray, John 07-30-2020 (00:00:01)	JG02.179
	189:14 (Whereupon, Deposition Exhibit	
	189:15 Gray-59, E-mail(s) w/Attached Masters	
	189:16 Pharmaceuticals Amicus Brief,	
	189:17 HDA_MDL_000162206 - HDA_MDL_000162249,	
	189:18 was marked for identification.)	
	189:19 BY MR. KENNEDY:	
189:20 - 190:14	Gray, John 07-30-2020 (00:00:43)	JG02.180
	189:20 Q. This is an e-mail attached to	
	189:21 the final version of the brief, true, and	
	189:22 it's being sent to you?	
	189:23 A. No.	
	189:24 Q. Is that right?	
	189:25 A. It wasn't sent to me. It was	
	190:1 sent to Ruth Miller.	
	190:2 Q. Does it say down below,	
	190:3 Elizabeth Gallenagh and then to John Gray?	
	190:4 A. Oh, the very bottom one. Yeah,	
	190:5 yeah, sorry.	
	190:6 Q. All right. Go to the next	
	190:7 page, 07.	
	190:8 A. Yeah.	
	190:9 Q. And this is the cover page of	
	190:10 the amicus brief filed by the HDA.	
	190:11 A. Uh-huh.	

Page/Line	Source	ID
190:12 - 191:10	<p>190:12 Q. Go to page 38. Lets start with</p> <p>190:13 page 38 and see what the HDA is telling the</p> <p>190:14 Court of Appeals. The first sentence on</p> <p>Gray, John 07-30-2020 (00:00:55)</p> <p>190:15 page 38 --</p> <p>190:16 A. Uh-huh.</p> <p>190:17 Q. -- the HDA writes to the Court:</p> <p>190:18 The practical infeasibility of requiring</p> <p>190:19 distributors to investigate and halt</p> <p>190:20 suspicious orders underscores the importance</p> <p>190:21 of ensuring that the DEA has complied with</p> <p>190:22 the APA before attempting to impose such</p> <p>190:23 duties.</p> <p>190:24 A. Uh-huh.</p> <p>190:25 Q. Practical infeasibility of</p> <p>191:1 requiring distributors to investigate and</p> <p>191:2 halt suspicious orders.</p> <p>191:3 Sir, this brief is 2016.</p> <p>191:4 A. Uh-huh.</p> <p>191:5 Q. We already went over this. In</p> <p>191:6 2012 you provided written answers to Congress</p> <p>191:7 telling them that that is exactly what the</p> <p>191:8 distributors are doing; they're investigating</p> <p>191:9 and stopping orders.</p> <p>191:10 A. Uh-huh.</p>	JG02.181
191:14 - 191:15	<p>Gray, John 07-30-2020 (00:00:05)</p> <p>191:14 Q. And now you're telling the</p> <p>191:15 Court of Appeals it's not feasible for them</p>	JG02.182
191:16 - 191:16	<p>Gray, John 07-30-2020 (00:00:00)</p> <p>191:16 to do that.</p>	JG02.303
191:22 - 192:17	<p>Gray, John 07-30-2020 (00:00:51)</p> <p>191:22 Q. Is that what you're telling the</p> <p>191:23 Court of Appeals, it is not feasible for</p> <p>191:24 distributors to investigate and halt</p> <p>191:25 suspicious orders? Is that what's written</p> <p>192:1 here?</p> <p>192:2 A. The infeasibility side of that,</p> <p>192:3 to my recollection, dealt with not</p> <p>192:4 necessarily the reporting. It was elements</p> <p>192:5 within those activities that the DEA were</p>	JG02.183

Page/Line

Source

ID

192:6 beginning to focus on that were becoming
 192:7 problematic for wholesalers. And you'd have
 192:8 to speak to an operations person to get the
 192:9 nuance on that.
 192:10 Q. Well, the Court of Appeals
 192:11 doesn't get to talk to an operations person
 192:12 to get the nuance. They're just reading what
 192:13 you're telling them. And you're telling them
 192:14 here that it's not feasible for distributors
 192:15 to investigate and stop. And that's contrary
 192:16 to what you testified to to Congress in 2012,
 192:17 2014 and 2017, true?

192:20 - 193:19

Gray, John 07-30-2020 (00:00:55)

JG02.184

192:20 A. Well, that statement right
 192:21 there is not the guts of what the appeal was
 192:22 about, which was specific to some activities
 192:23 within the administrative law concept
 192:24 process, and, you know, the real issue here
 192:25 is the ad law issues, because that's why the
 193:1 industry felt it had to -- not necessarily to
 193:2 be supportive of Masters, but to be
 193:3 supportive of the proper administrative
 193:4 procedures.
 193:5 And they felt that those had
 193:6 been ignored by the DEA in the Masters case
 193:7 in particular, the details of which are
 193:8 beyond me now, but it was a big deal at the
 193:9 time.
 193:10 BY MR. KENNEDY:
 193:11 Q. Let's see -- well, sir, I know
 193:12 that that was the main focus, and we'll talk
 193:13 about the main focus, but you're not
 193:14 suggesting that as a lawyer and a party to a
 193:15 lawsuit, you only have to be forthright and
 193:16 honest on the main focus of the brief, but
 193:17 you're allowed to kind of play around the
 193:18 edges on stuff that's not the main focus?
 193:19 That's not what you're saying, are you?

194:2 - 194:3

Gray, John 07-30-2020 (00:00:01)

JG02.185

194:2 Q. That's not what you're saying,

Page/Line	Source	ID
194:5 - 194:10	<p>194:3 is it?</p> <p>Gray, John 07-30-2020 (00:00:08)</p> <p>194:5 A. No, I'm not saying anything one</p> <p>194:6 way or the other.</p> <p>194:7 BY MR. KENNEDY:</p> <p>194:8 Q. All right. Go to page 40.</p> <p>194:9 Let's see what you next represented to the</p> <p>194:10 Court in this brief. Page 40. Page 40 down</p>	JG02.186
194:11 - 194:22	<p>Gray, John 07-30-2020 (00:00:44)</p> <p>194:11 at the bottom, it starts with "Accordingly."</p> <p>194:12 It says: Accordingly -- do you see that at</p> <p>194:13 the bottom?</p> <p>194:14 A. Oh, the very bottom?</p> <p>194:15 Q. Yeah. You say: Accordingly,</p> <p>194:16 DEA's regulations had sensibly imposed a duty</p> <p>194:17 on distributors simply to report suspicious</p> <p>194:18 orders, but left it to the DEA and its agents</p> <p>194:19 to investigate and halt suspicious orders.</p> <p>194:20 Are you suggesting here, sir,</p> <p>194:21 that the DEA has the job of investigating and</p> <p>194:22 halting suspicious orders?</p>	JG02.304
195:7 - 195:24	<p>Gray, John 07-30-2020 (00:00:42)</p> <p>195:7 A. Yeah, DEA -- where are we?</p> <p>195:8 Okay. Well, in fact, the second half of that</p> <p>195:9 sentence is exactly what was going on.</p> <p>195:10 BY MR. KENNEDY:</p> <p>195:11 Q. Right. The DEA is the one</p> <p>195:12 that's supposed to investigate and stop the</p> <p>195:13 orders. The distributors are supposed to</p> <p>195:14 just report them. Is that what you're</p> <p>195:15 saying?</p> <p>195:16 A. That was the understanding at</p> <p>195:17 the time.</p> <p>195:18 Q. Well, sir, didn't the DEA --</p> <p>195:19 didn't the DEA tell you folks, I think nine</p> <p>195:20 years before this, that they could not</p> <p>195:21 possibly investigate all the pharmacies in</p> <p>195:22 this country, that they needed the help of</p> <p>195:23 the distributors?</p> <p>195:24 Didn't they tell you that?</p>	JG02.187

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
196:2 - 196:6	Gray, John 07-30-2020 (00:00:06) 196:2 A. I never heard those words out 196:3 of anybody at DEA. 196:4 BY MR. KENNEDY: 196:5 Q. Well, let's look at Exhibit 54, 196:6 if you would, sir.	JG02.188
196:7 - 196:12	Gray, John 07-30-2020 (00:00:00) 196:7 (Whereupon, Deposition Exhibit 196:8 Gray-54, 9/7/07 Summary of DEA-HDMA 196:9 Meeting, HDA_MDL_000139396 - 196:10 HDA_MDL_000139397, was marked for 196:11 identification.) 196:12 BY MR. KENNEDY:	JG02.189
196:13 - 197:25	Gray, John 07-30-2020 (00:01:25) 196:13 Q. Do you have 54? 196:14 A. I have it. 196:15 Q. This is a summary of the DEA 196:16 HDMA meeting on suspicious orders. 196:17 Do you see that? 196:18 A. Uh-huh. Yeah, I see it, yep. 196:19 Q. This is a meeting with the DEA, 196:20 the HDMA on September 7th, 2007. This is 196:21 nine years before that statement -- 196:22 A. Uh-huh. 196:23 Q. -- in the amicus brief. 196:24 A. Yep. 196:25 Q. Key takeaways. Do you see 197:1 where it says key takeaways from the meeting? 197:2 A. Uh-huh. Uh-huh. 197:3 Q. Go down to bullet point three. 197:4 You said you never heard this, but here's 197:5 bullet point three of this meeting, in-person 197:6 meeting: DEA indicated that they did not 197:7 have the resources to inspect every pharmacy; 197:8 therefore, it was important for the 197:9 distributor to know their customers. 197:10 Did I read that right? 197:11 A. Yep. You did. 197:12 Q. 40,000 -- 40,000 pharmacies in 197:13 this country, sir, correct?	JG02.190

Page/Line	Source	ID
	197:14 A. I -- gosh, I think that's a -- 197:15 on the short side. 197:16 Q. What the DEA is saying to the 197:17 distributors, to you at the HDA, we need 197:18 help, we can't do this, correct? 197:19 A. Uh-huh. 197:20 Q. And at the same time you're 197:21 writing this in this brief, the PR message is 197:22 that, hey, us distributors, we're committed, 197:23 but now you're telling the Court of Appeals 197:24 it's not our job, this is the DEA's job, 197:25 after they told you they can't do it, right?	
198:3 - 198:23	Gray, John 07-30-2020 (00:00:48) 198:3 A. That -- that was an issue 198:4 from -- I wasn't at this meeting, but that 198:5 was an issue from that point on, is who was 198:6 supposed to do what, and in questions 198:7 submitted to them, what have you, DEA would 198:8 never -- would never sit down with the 198:9 industry and talk that through because that 198:10 getting to know customers, some of their 198:11 recommendations that I did hear were really 198:12 inappropriate for the wholesalers to engage 198:13 in. 198:14 BY MR. KENNEDY: 198:15 Q. Sir, at the point in time when 198:16 you write this brief -- and this is in your 198:17 own public relations material. You have an 198:18 understanding at the point in time you're 198:19 writing this brief and making this statement 198:20 there were more people dying from overdoses 198:21 from prescription drugs than heroin and 198:22 cocaine combined at this point in time? Did 198:23 you realize that?	JG02.191
199:2 - 199:8	Gray, John 07-30-2020 (00:00:15) 199:2 Q. Did you realize that, sir? 199:3 A. I can't say I did or I didn't. 199:4 Q. Nine years before you wrote 199:5 this brief, the DEA had a personal meeting 199:6 with you folks and said we can't do the job	JG02.192

Page/Line	Source	ID
199:11 - 200:2	<p>199:7 ourselves. There's too many pharmacies. 199:8 They told you that, did they not? Gray, John 07-30-2020 (00:00:44) 199:11 A. Again, I wasn't in the room 199:12 when these comments were made, so I don't 199:13 know if this is exactly how they pressed it. 199:14 The only thing I heard was that they expected 199:15 truck drivers, which are commercial truck 199:16 drivers, to sit in parking lots and watch 199:17 customers going into a pharmacy. That's the 199:18 only thing I heard. 199:19 BY MR. KENNEDY: 199:20 Q. Sir, you folks -- you, your 199:21 executive committee, your board, McKesson, 199:22 Cardinal, AmerisourceBergen, you folks wrote 199:23 this amicus brief because it was your 199:24 intention and it was your expectation that 199:25 the Court in Masters was going to stop the 200:1 enforcement actions by the DEA. That was 200:2 your expectation, was it not, sir?</p>	JG02.193
200:5 - 200:5	<p>Gray, John 07-30-2020 (00:00:01) 200:5 A. No, the expectation was --</p>	JG02.194
200:6 - 200:15	<p>Gray, John 07-30-2020 (00:00:23) 200:6 yeah, the expectation was on a particular 200:7 point of administrative law, which I couldn't 200:8 get into with you right now, but I do 200:9 remember at the time it was a specific issue, 200:10 and that's what it was all about. It had 200:11 nothing to do with Masters, per se. It had 200:12 nothing to do with even the DEA. It was an 200:13 interpretation of administrative law. 200:14 BY MR. KENNEDY: 200:15 Q. Look at Exhibit 55.</p>	JG02.195
200:16 - 200:19	<p>Gray, John 07-30-2020 (00:00:02) 200:16 (Whereupon, Deposition Exhibit 200:17 Gray-55, E-mail(s), HDA_MDL_000088021- 200:18 HDA_MDL_000088025, was marked for 200:19 identification.)</p>	JG02.196
200:20 - 202:14	<p>Gray, John 07-30-2020 (00:01:39) 200:20 A. 55. Okay.</p>	JG02.197

Page/Line

Source

ID

200:21 BY MR. KENNEDY:

200:22 Q. This is 55. You see the second

200:23 e-mail down where -- this is the e-mail from

200:24 you to Pat Kelly.

200:25 A. Uh-huh. Yep.

201:1 Q. Three lines down in your -- Pat

201:2 Kelly -- who is Pat Kelly?

201:3 A. My head of government affairs,

201:4 senior VP.

201:5 Q. Sentence that starts with "Was

201:6 talking with." Do you see that sentence,

201:7 "Was talking with" --

201:8 A. Uh-huh.

201:9 Q. -- about three lines down in

201:10 the middle?

201:11 A. Wait a minute. Was talking --

201:12 wait a minute. Now, I'm not finding that

201:13 one. Do you have it highlighted? Yeah, you

201:14 do.

201:15 Q. Was talking with --

201:16 Do you see that?

201:17 A. Okay, yeah.

201:18 Q. You tell Mr. Kelly in January

201:19 of 2017: Was talking with Giacomini. Who is

201:20 Giacomini?

201:21 A. He was our chairman.

201:22 Q. Of the HDA?

201:23 A. Yes.

201:24 Q. Was talking with Giacomini last

201:25 night. We were talking about Masters.

202:1 That's the Masters case, right?

202:2 A. Correct.

202:3 Q. Then you state: I think the

202:4 Masters case will stymie the DEA in pursuing

202:5 much enforcement since that outcome will

202:6 really dictate how the DEA can enforce.

202:7 Is that what you stated, sir?

202:8 A. Right. That's what it says.

202:9 Q. And that was the intention of

202:10 the HDA all along, starting with the PR

Page/Line	Source	ID
202:11	program back in 2012, let's stymie	
202:12	enforcement actions by the DEA. And you	
202:13	finally thought you had with the Masters	
202:14	case, did you not?	
202:17 - 202:21	Gray, John 07-30-2020 (00:00:06)	JG02.198
202:17	A. That's your -- oh, I'm sorry.	
202:18	That's your opinion, your interpretation.	
202:19	It's not ours.	
202:20	BY MR. KENNEDY:	
202:21	Q. Those are your words.	
202:25 - 202:25	Gray, John 07-30-2020 (00:00:02)	JG02.199
202:25	Q. Stymied. Correct, sir?	
203:5 - 203:21	Gray, John 07-30-2020 (00:00:59)	JG02.200
203:5	Q. I'm going to go back to tax for	
203:6	a second. We talked about some specific	
203:7	legislative provisions, but I want to talk in	
203:8	a general -- in a general sense, I suppose	
203:9	the bottom line with respect to legislation.	
203:10	It simply was the HDA's policy	
203:11	to oppose any legislation that might	
203:12	negatively affect its distributors. That was	
203:13	the policy across the board, was it not, sir?	
203:14	A. I don't know -- well, across	
203:15	the board, no. There are other reasons that	
203:16	we did what we did on certain pieces of	
203:17	legislation. It wasn't necessarily always in	
203:18	the interest of members -- I mean, that's too	
203:19	broad.	
203:20	Q. I'm going to give you	
203:21	Exhibit 49. If you can take a look at that.	
204:2 - 205:20	Gray, John 07-30-2020 (00:01:44)	JG02.201
204:2	A. 49. 49. Yep.	
204:3	BY MR. KENNEDY:	
204:4	Q. You see this title is HDMA	
204:5	Organizational Goals for 2013?	
204:6	A. Yep, uh-huh.	
204:7	Q. So these are the goals of your	
204:8	entire organization. What, you would	
204:9	articulate these each year?	
204:10	A. Each year.	

Page/Line

Source

ID

204:11 Q. Go to page 44.

204:12 A. Okay.

204:13 Q. Look at that, the legislative

204:14 goal for the year.

204:15 A. Uh-huh.

204:16 Q. Paragraph 3 or 4 down starts

204:17 with "While Potentially."

204:18 Do you see that?

204:19 A. Yes.

204:20 Q. Does it state: While

204:21 potentially harmful legislation on the LIFO,

204:22 drug safety/shortage and controlled

204:23 substances did not pass during this session

204:24 of Congress, we fully expect the issues to

204:25 remain active into the next season. HDMA

205:1 will continue to oppose any legislation that

205:2 negatively impacts pharmaceutical

205:3 distribution.

205:4 That was the policy across the

205:5 board, was it not, sir?

205:6 A. That was a statement in 2013.

205:7 Q. And, sir, in addition to

205:8 opposing legislation that might negatively

205:9 impact distributors, in addition to that, you

205:10 folks never supported legislation relating to

205:11 opioid abuse, right, where --

205:12 A. No. No, not --

205:13 Q. -- you told them we're not

205:14 going to support legislation at the state

205:15 level that in any way supports the fight

205:16 against abuse. That was also a situation and

205:17 a policy, true?

205:18 A. No, not true.

205:19 Q. Let's look at Exhibit 50, if

205:20 you would.

205:21 - 205:25

Gray, John 07-30-2020 (00:00:01)

JG02.202

205:21 (Whereupon, Deposition Exhibit

205:22 Gray-50, E-mail(s) w/Attached

205:23 Memorandum In Support,

205:24 HDA_MDL_000214979 - HDA_MDL_000214982,

Page/Line

Source

ID

206:2 - 208:1

205:25 was marked for identification.)

Gray, John 07-30-2020 (00:02:08)

JG02.203

206:2 Q. This is from 2017.

206:3 A. Uh-huh.

206:4 Q. That's important. This is

206:5 2017.

206:6 A. Sure.

206:7 Q. The bottom e-mail is -- the

206:8 bottom e-mail is the first in time, and it's

206:9 from Beth Mitchell of AmerisourceBergen, and

206:10 she is writing this to Matthew DiLoreto, all

206:11 right?

206:12 A. All right.

206:13 Q. She says: Hi, Matt. Have you

206:14 been able to find anything, question mark,

206:15 any state bills or approaches we have been

206:16 able to say yes, we support this as an effort

206:17 to address opioid abuse?

206:18 Go up, and Matthew answers,

206:19 right?

206:20 A. Uh-huh.

206:21 Q. Matthew is the VP of state

206:22 government affairs at the HDA, so he's got a

206:23 significant position, true?

206:24 A. Yes.

206:25 Q. And he says: Beth -- and this

207:1 is 2017 -- sorry for the delay on this

207:2 project but I was really hoping to find

207:3 something. No one can reference any blanket

207:4 letter of support that we have issued on

207:5 opioid abuse issues in the past outside of

207:6 our support for CARA at the federal level.

207:7 Between you and I, I totally agree that we

207:8 need to begin openly supporting some measures

207:9 rather than always opposing. We were going

207:10 to support the governor's opioid abuse

207:11 package in Connecticut, but it moved before

207:12 we could even get a letter out.

207:13 Bottom line is I talked to both

207:14 Patrick -- and that would be Pat Kelly,

Page/Line

Source

ID

207:15 right?

207:16 A. Correct.

207:17 Q. -- and Liz, and they cannot

207:18 recall any time that we openly and publicly

207:19 supported an opioid abuse prevention measure.

207:20 Signed Matthew DiLoreto, vice president,

207:21 state government affairs, Healthcare

207:22 Distribution Alliance, sir.

207:23 Did I read that right?

207:24 A. You've read the memo correctly.

207:25 Q. All right. I'm sorry to go

208:1 back to taxes.

208:2 - 209:1

Gray, John 07-30-2020 (00:01:00)

JG02.305

208:2 Now, we've talked a lot about

208:3 this first PR message. The first PR message

208:4 is let's talk about how committed the

208:5 industry is to stopping abuse and addiction

208:6 and diversion, but, sir, there was a second

208:7 message, was there not? You folks formulated

208:8 a second public relations message back in

208:9 2013 and 2012, did you not?

208:10 A. I don't know.

208:11 Q. You don't remember the second

208:12 message?

208:13 A. No, not off the top of my head

208:14 here, I don't.

208:15 Q. Well, APCO, that was the PR

208:16 firm hired in 2012.

208:17 A. Yeah.

208:18 Q. We talked about that, right?

208:19 And the very first thing that

208:20 you folks paid APCO to do, you paid them to

208:21 go out and do a survey to determine which

208:22 messages were most effective.

208:23 Do you recall that?

208:24 A. Very generally.

208:25 Q. Let's look at the survey

209:1 results, Exhibit 63, if you have that.

209:2 - 209:7

Gray, John 07-30-2020 (00:00:01)

JG02.204

209:2 (Whereupon, Deposition Exhibit

Page/Line	Source	ID
209:22 - 211:12	<p>209:3 Gray-63, APCO HDMA Message, 209:4 Development Research, Summary of 209:5 Qualitative Findings, 209:6 HDA_MDL_000024908 - HDA_MDL_000024928, 209:7 was marked for identification.) Gray, John 07-30-2020 (00:01:25) 209:22 Q. All right. Can you see it on 209:23 your screen, sir? 209:24 A. Got it. 209:25 Q. All right. It says APCO. 210:1 That's your public relations firm? 210:2 A. What year? 2013? At that 210:3 time, yes. 210:4 Q. All right. And it says HDMA 210:5 Message Development Research that they did 210:6 for you. You remember that? 210:7 A. Uh-huh. 210:8 Q. Go to the next page, the very 210:9 next page. I'm sorry, go to page 10. 210:10 This is the survey that they 210:11 did. Remember, we talked about this is the 210:12 first thing you paid them to do is a survey? 210:13 A. Yeah. 210:14 Q. Let's see which messages are 210:15 ringing true with folks. 210:16 Up at the top: This document 210:17 summarizes findings from the qualitative 210:18 focus groups and in-depth interview portion 210:19 of the HDMA message development research 210:20 program. 210:21 So that's what this document 210:22 is, right? 210:23 A. That's what it says. 210:24 Q. You go down to the bottom then 210:25 and you can see some of the folks that they 211:1 talked to to get feedback on which messages 211:2 were effective. They talked to opinion 211:3 leaders, pharmacists, policy influencers, law 211:4 enforcement, including some folks from 211:5 West Virginia, do you see there down at the</p>	JG02.205

Page/Line	Source	ID
211:6 bottom, West Virginia?		
211:7 A. Oh, yeah, way at the bottom.		
211:8 Okay.		
211:9 Q. They did focus groups, they did		
211:10 in-depth interviews just to see which		
211:11 messages are effective.		
211:12 So go to page 26. Up at the		
211:13 - 213:20 Gray, John 07-30-2020 (00:02:41)		JG02.306
211:13 top it says Industry Messages.		
211:14 Do you see that?		
211:15 A. Yeah. Yeah. Got it.		
211:16 Q. And they say: Respondents --		
211:17 that's the people that they interviewed,		
211:18 right? Correct?		
211:19 A. It's -- I suppose.		
211:20 Q. Okay. Respondents were		
211:21 presented with a series of messages drafted		
211:22 by HDMA in response to recent events in		
211:23 Florida and West Virginia.		
211:24 Go to the next paragraph. It		
211:25 starts with "A clear." It states: A clear		
212:1 message that is delivered through the		
212:2 existing messages is that the industry has		
212:3 limited access to data from DEA. And,		
212:4 importantly, without such access, respondents		
212:5 are sympathetic to HDMA and the industry and		
212:6 question how distributors can be held		
212:7 responsible for diversion. Described as an		
212:8 information shortage by a policy influence,		
212:9 the messages have the effect of seeding doubt		
212:10 about regulators -- regulators/enforcers.		
212:11 Do you see that?		
212:12 A. Got it.		
212:13 Q. Regulators and enforcers,		
212:14 they're talking about the DEA, right?		
212:15 A. No, I don't know.		
212:16 Q. You don't know?		
212:17 A. Could be FDA. Could be police.		
212:18 Could be state and local law enforcement.		
212:19 Could be any of the above.		

Page/Line

Source

ID

212:20 Q. Okay. Could be the DEA?

212:21 A. Could be.

212:22 Q. So the message that the DEA

212:23 wasn't providing information in the data, at

212:24 least your PR people say that's -- that's

212:25 effective. That message works, correct?

213:1 A. That's the conclusion it

213:2 appears to have reached.

213:3 Q. Your PR people say that this

213:4 message is effective in making people, quote,

213:5 question how distributors can be held

213:6 responsible for diversion. That's what your

213:7 PR folks told you, right?

213:8 A. That's what this document says.

213:9 Q. In fact, the message is so

213:10 effective that they tell you that this

213:11 message has the effect in that it seeds

213:12 doubt. It seeds doubt about regulators and

213:13 enforcers, right?

213:14 A. Uh-huh.

213:15 Q. That's what this survey was

213:16 telling you folks at the HDA, true?

213:17 A. That's what it says.

213:18 Q. So what you folks did was take

213:19 the results from this survey and turn it into

213:20 a PR program, true?

213:24 - 217:17

Gray, John 07-30-2020 (00:03:57)

JG02.206

213:24 Q. True? Right, sir?

213:25 A. I -- you know what, we're -- I

214:1 don't recall exactly the timeline.

214:2 Q. All right. Well, here's a

214:3 little timeline. That's the exact message

214:4 that you gave to Congress in 2012 when you

214:5 testified --

214:6 A. Yeah.

214:7 Q. -- in 2014 --

214:8 A. No.

214:9 Q. -- when you testified and in

214:10 2017 you testified. The DEA isn't giving us

214:11 the information, they are not communicating,

Page/Line

Source

ID

214:12 and therefore, you can't hold us responsible.
214:13 That's the message that you delivered
214:14 personally in '12, '14 and '17, true?
214:15 A. Where did the document go? It
214:16 just vanished.
214:17 Possibly words to that effect,
214:18 yeah. I don't know.
214:19 Q. And, sir, you wrote that in
214:20 your amicus briefs in the Cardinal case, the
214:21 Masters case, the West Virginia Supreme Court
214:22 case --
214:23 A. Well, I haven't seen that
214:24 language in those cases. We haven't gone
214:25 over those.
215:1 Q. Sir, that's the message that
215:2 you gave to the Wall Street Journal and other
215:3 media outlets, we're not getting the
215:4 information from the DEA, correct?
215:5 A. I can't tell whether it's
215:6 correct or not.
215:7 Q. Let's look at the Wall Street
215:8 Journal, what you wrote to them. Exhibit 43,
215:9 please.
215:10 A. Yep.
215:11 Q. Look at the second paragraph
215:12 that's -- again, this is your letter in 23 --
215:13 or excuse me, 2013 to the Wall Street
215:14 Journal, right?
215:15 A. Uh-huh. Uh-huh. Uh-huh.
215:16 Q. And the sentence, second
215:17 paragraph three lines up starts with "Like
215:18 FedEx." You see that?
215:19 A. I see it.
215:20 Q. It says: Like FedEx and UPS,
215:21 national and regional primary distributors
215:22 face the predicament of being held
215:23 accountable for policing prescription drug
215:24 diversion with incomplete information and
215:25 inadequate guidance from federal authorities.
216:1 Did you write that to the Wall

Page/Line

Source

ID

216:2 Street Journal, sir?
216:3 A. Looks like I did.
216:4 Q. And your talking points, your
216:5 media talking points, we discussed those
216:6 earlier. Do you remember that, media talking
216:7 points? You're familiar with that, true?
216:8 A. May or may not have been in
216:9 there, but for the sake -- go ahead.
216:10 Q. Well, let's look at 36,
216:11 Exhibit 36.
216:12 A. Okay. Where's 36?
216:13 Q. 36, we've already gone through
216:14 this.
216:15 A. Yeah.
216:16 Q. Go to page -- go to 400,
216:17 page 400 of your media talking points.
216:18 A. Okay. Good.
216:19 Q. And For Background Use Only, do
216:20 you see that heading at the bottom?
216:21 A. Uh-huh. Uh-huh.
216:22 Q. You're talking about 2006 to
216:23 2015 time frame. Go to bullet point two.
216:24 And that's a talking point for media, for
216:25 Congress, for the Senate, for state
217:1 legislations.
217:2 Do you state: During this same
217:3 time period, '06 to '15, the DEA refused to
217:4 respond to legitimate compliance questions
217:5 from distributors, did not issue any guidance
217:6 or rulemaking, and refused to meet with
217:7 industry to clarify its interpretation of the
217:8 compliance rules?
217:9 That was a talking point, was
217:10 it not?
217:11 A. Yep. It was.
217:12 Q. And, sir, that talking point,
217:13 that talking point, the DEA refused to talk
217:14 to you about expectations of distributors,
217:15 that they refused to meet with you, that was
217:16 not accurate; that was just a talking point,

Page/Line	Source	ID
217:20 - 219:3	<p>217:17 but that wasn't accurate, true?</p> <p>Gray, John 07-30-2020 (00:01:12)</p> <p>217:20 A. Well, in my experience</p> <p>217:21 personally, that is not true. They canceled</p> <p>217:22 two meetings I was supposed to go to.</p> <p>217:23 Mr. Rannazzisi refused to meet with me to</p> <p>217:24 even talk these things through. But we used</p> <p>217:25 to have regular meetings with the DEA prior</p> <p>218:1 to 2006, and once Mr. Rannazzisi came on, we</p> <p>218:2 had had a longstanding relationship with them</p> <p>218:3 going back to the 1980s, and by 19- -- by</p> <p>218:4 2006, '7, our meetings were all canceled and</p> <p>218:5 we submitted questions for guidance and never</p> <p>218:6 got responses.</p> <p>218:7 And that's when this whole</p> <p>218:8 thing launched with DEA not -- not willing to</p> <p>218:9 work with us as registrants and provide</p> <p>218:10 legislative and rulemaking guidance around</p> <p>218:11 some of the specific actions they were</p> <p>218:12 requesting we take.</p> <p>218:13 BY MR. KENNEDY:</p> <p>218:14 Q. Are you all done, sir?</p> <p>218:15 A. That's it.</p> <p>218:16 Q. All right. Give me G-1,</p> <p>218:17 please. This is a graphic. Let's take a</p> <p>218:18 look at this.</p> <p>218:19 A. What's G1?</p> <p>218:20 Q. You see this?</p> <p>218:21 A. Yeah.</p> <p>218:22 Q. This is a graphic.</p> <p>218:23 A. Yep.</p> <p>218:24 Q. This is an outline. This is an</p> <p>218:25 outline of all the meetings that --</p> <p>219:1 A. Yep.</p> <p>219:2 Q. -- you said -- I guess you said</p> <p>219:3 never occurred, and let's go through these.</p> <p>Gray, John 07-30-2020 (00:00:10)</p> <p>219:7 Q. Pick up Exhibit 13, if you</p> <p>219:8 would, sir. I'm not going to put Exhibit 13</p> <p>219:9 up, but I want you to look at Exhibit 13,</p>	<p>JG02.207</p> <p>JG02.208</p>
219:7 - 219:12		

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
219:10 - 219:16	<p>219:10 because it will -- maybe it will help you</p> <p>219:11 remember with respect to some of these</p> <p>219:12 meetings.</p> <p>Gray, John 07-30-2020 (00:00:01)</p> <p>219:13 (Whereupon, Deposition Exhibit</p> <p>219:14 Gray-13, E-mail(s),</p> <p>219:15 HDA_MDL_000160845 - HDA_MDL_000160846,</p> <p>219:16 was marked for identification.)</p>	JG02.209
219:18 - 224:19	<p>Gray, John 07-30-2020 (00:04:48)</p> <p>219:18 Q. Do you have 13 in front of you?</p> <p>219:19 A. Not yet. Okay. Got it.</p> <p>219:20 Q. DEA Communications and</p> <p>219:21 Meetings. We already talked about the fact</p> <p>219:22 that in '05, as part of the Distributor</p> <p>219:23 Initiative, the DEA met with McKesson,</p> <p>219:24 Cardinal and AmerisourceBergen and other</p> <p>219:25 distributors to talk about their</p> <p>220:1 expectations.</p> <p>220:2 A. Uh-huh.</p> <p>220:3 Q. Correct? We've talked about</p> <p>220:4 that.</p> <p>220:5 You're certainly familiar with</p> <p>220:6 the three specific letters that the DEA sent</p> <p>220:7 out to every distributor outlining</p> <p>220:8 expectations, correct?</p> <p>220:9 A. Well, I think there were two,</p> <p>220:10 but that's -- okay.</p> <p>220:11 Q. First one went on 9/27/06. You</p> <p>220:12 don't disagree with the date on that letter,</p> <p>220:13 do you?</p> <p>220:14 A. Yeah, I don't have it in front</p> <p>220:15 of me, so whatever.</p> <p>220:16 Q. Second letter --</p> <p>220:17 A. I can't make a decision on</p> <p>220:18 that.</p> <p>220:19 Q. All right. Do you have any</p> <p>220:20 disagreement that a second letter was sent by</p> <p>220:21 the DEA to all distributors on 2/7/07?</p> <p>220:22 A. I know a second letter was</p> <p>220:23 sent.</p>	JG02.210

Page/Line

Source

ID

220:24 Q. All right. And then on
220:25 September 7th, '07, the DEA came to the HDA
221:1 and they made a presentation to you folks so
221:2 you could see the Distributor Initiative
221:3 presentation that already had been made to
221:4 the distributors.
221:5 Do you remember that meeting,
221:6 sir?
221:7 A. Yeah, that was the meeting
221:8 we've talked about earlier.
221:9 Q. All right. Next, 10/16/07, a
221:10 full-day meeting between the DEA and the
221:11 HDMA, full-day meeting, true?
221:12 A. Uh-huh.
221:13 Q. 13 distributors were present?
221:14 A. Yeah, I don't remember, but
221:15 obviously it happened based on this document.
221:16 Q. And then -- and that's in
221:17 accordance with the memo you have in front of
221:18 you, true?
221:19 A. Correct.
221:20 Q. And then December 27 of '07,
221:21 the DEA sent another letter to distributors
221:22 outlining their expectations with respect to
221:23 diversion control, true?
221:24 A. I don't know. I don't -- where
221:25 are you seeing that?
222:1 Q. That's the third letter that's
222:2 sent. You're not familiar with the third
222:3 letter sent by the distributors [sic]?
222:4 A. No.
222:5 Q. Excuse me, by the DEA.
222:6 A. Right, I am not. I don't
222:7 recall it.
222:8 Q. And then, sir, the HDA had
222:9 three separate meetings with the DEA, 4/08,
222:10 6/08, 9/08, to discuss the industry
222:11 compliance guidelines related to suspicious
222:12 order monitoring, three separate meetings
222:13 with your organization, true?

Page/Line

Source

ID

222:14 A. Correct, in '08. If that's
222:15 what the document says.
222:16 Q. That's what your memo says.
222:17 And then in '08, are you familiar with the
222:18 fact that in 2008 when McKesson, Cardinal and
222:19 AmerisourceBergen formulated their own
222:20 compliance guidelines, each of them met with
222:21 the DEA separately to review those
222:22 guidelines? Did you know about that?
222:23 A. Boy, it's been a while. Can't
222:24 recall.
222:25 Q. 2/4/09, the DEA met with the
223:1 HDMA and distributors. Are you familiar with
223:2 that?
223:3 A. Same category, I just can't
223:4 recall that meeting. The memo indicates it.
223:5 Q. It is on the memo in front of
223:6 you?
223:7 A. Yes.
223:8 Q. 16 DEA agents came to that, 16
223:9 DEA staff members came to that meeting, did
223:10 they not?
223:11 A. I wasn't at it. I don't know.
223:12 Q. What does it indicate on the
223:13 memo in front of you from the HDMA, sir? 16
223:14 DEA staff there?
223:15 A. Staff, yes.
223:16 Q. Then on 12/7/10, the DEA and
223:17 the HDMA had another meeting about suspicious
223:18 order monitoring, true?
223:19 A. Well, it says so.
223:20 Q. On 12/19/11, the DEA and the
223:21 HDA had another meeting to talk about
223:22 suspicious order monitoring, did they not?
223:23 A. Well, it says so here too.
223:24 Q. And from 2010 to 2013, the DEA
223:25 did presentations at the annual HDMA
224:1 management conference, did they not?
224:2 A. I don't know if it was
224:3 consecutive years. They didn't always make

Page/Line	Source	ID
	<p>224:4 it. Sometimes they canceled. But they did</p> <p>224:5 come down to that meeting. They would send</p> <p>224:6 one person and they would do a 20-minute</p> <p>224:7 presentation and that was it.</p> <p>224:8 Q. In addition to these meetings</p> <p>224:9 and these letters that we've talked about,</p> <p>224:10 the DEA also held educational conferences,</p> <p>224:11 did they not?</p> <p>224:12 A. I do not know that.</p> <p>224:13 Q. The HDA would attend those</p> <p>224:14 conferences, would they not?</p> <p>224:15 A. Yeah, I'm -- I don't know.</p> <p>224:16 Q. You don't know?</p> <p>224:17 A. Maybe staff did. Maybe they</p> <p>224:18 didn't. I don't know.</p> <p>224:19 Q. Well, let's look at Exhibit 37.</p>	
224:20 - 224:24	<p>Gray, John 07-30-2020 (00:00:01)</p> <p>224:20 (Whereupon, Deposition Exhibit</p> <p>224:21 Gray-37, E-mail(s) w/Attached</p> <p>224:22 Suggested Questions, ADBCMDL00362931 -</p> <p>224:23 ADBCMDL00362934, was marked for</p> <p>224:24 identification.)</p>	JG02.211
225:2 - 226:18	<p>Gray, John 07-30-2020 (00:01:40)</p> <p>225:2 Q. This is from Anita Ducca from</p> <p>225:3 the HDA.</p> <p>225:4 A. Uh-huh.</p> <p>225:5 Q. This is 2009, correct?</p> <p>225:6 A. Yes. Yes.</p> <p>225:7 Q. She's sending this out to the</p> <p>225:8 members of the regulatory affairs committee,</p> <p>225:9 and McKesson, Cardinal, AmerisourceBergen</p> <p>225:10 have representatives, true?</p> <p>225:11 A. That's -- let's see, yeah,</p> <p>225:12 regulatory affairs update to -- that's weird.</p> <p>225:13 Yeah, RAC members, sure.</p> <p>225:14 Q. All right. Then go down to DEA</p> <p>225:15 Pharmaceutical Industry Conference.</p> <p>225:16 A. Okay.</p> <p>225:17 Q. Last sentence: DEA provided a</p> <p>225:18 list of questions that they suggest</p>	JG02.212

Page/Line	Source	ID
	225:19 wholesalers ask of their customers prior to 225:20 shipping controlled substances. The list is 225:21 attached. 225:22 A. Okay. 225:23 Q. So this is going out to 225:24 McKesson, Cardinal and AmerisourceBergen from 225:25 the HDA just in case they didn't go to the 226:1 conference themselves, right? 226:2 A. That's your conclusion. It 226:3 could be. Could not be. Who knows? 226:4 Q. And if you look at the 226:5 attachment, she's providing to your members 226:6 the list of questions that the DEA is 226:7 suggesting the distributors ought to ask 226:8 pharmacists before they ship them drugs, 226:9 right? 226:10 A. Uh-huh. 226:11 Q. And then this even goes up 226:12 on -- this goes up on the HDA website so if a 226:13 distributor -- let's say McKesson decides not 226:14 to go to the DEA conference, they could get 226:15 this -- if they don't go to the conference, 226:16 they can get this from Ms. Ducca and the HDA 226:17 or they can just look at your website and get 226:18 this information, right?	
226:21 - 227:7	Gray, John 07-30-2020 (00:00:26) 226:21 A. Yes. Whether -- whether it was 226:22 or wasn't on our website, I don't know, but 226:23 if it was on the website, you could access 226:24 it. 226:25 /// 227:1 BY MR. KENNEDY: 227:2 Q. And, sir, in addition to the 227:3 conferences and the letters and the meetings, 227:4 if a distributor wanted to write or e-mail or 227:5 call the DEA regional office or the national 227:6 office, they could do that too and ask 227:7 questions, could they not?	JG02.213
227:10 - 228:4	Gray, John 07-30-2020 (00:00:37) 227:10 A. I have no idea what the members	JG02.214

Page/Line

Source

ID

227:11 did day to day, like that.

227:12 BY MR. KENNEDY:

227:13 Q. Well, sir, you -- you're

227:14 familiar with the Government Accountability

227:15 Office that looked into the DEA and

227:16 distributors and this problem that we have in

227:17 our country with diversion and abuse? You're

227:18 familiar with that study that they did, sir?

227:19 A. Well, there might have been one

227:20 or two. I'm not sure which one we're talking

227:21 about.

227:22 Q. I'm talking about the 2015

227:23 study that you and the HDA sent to

227:24 reporters --

227:25 A. Okay.

228:1 Q. -- cited to Congress, put on

228:2 your website. Do you remember that?

228:3 A. That study, I remember.

228:4 Q. Look at Exhibit 14.

228:10 - 228:22

Gray, John 07-30-2020 (00:00:22)

JG02.215

228:10 A. There we go. Yep.

228:11 BY MR. KENNEDY:

228:12 Q. June 15, GAO Prescription

228:13 Drugs.

228:14 A. Yep.

228:15 Q. Do you see that?

228:16 A. Yep.

228:17 Q. Go to page 96. And you folks

228:18 participated in this study, and the

228:19 distributors participated in this study, did

228:20 they not?

228:21 A. I don't know if the members did

228:22 or not.

229:11 - 230:21

Gray, John 07-30-2020 (00:01:43)

JG02.216

229:11 Q. 30796.

229:12 A. Oh, 30796. Okay. Found it.

229:13 Q. Got it?

229:14 A. Okay. Good.

229:15 Q. This is from the GAO study.

229:16 They talked to distributors. Halfway down,

229:17 the sentence that starts with Distributors.

229:18 Do you see that?

229:19 A. Uh-huh.

229:20 Q. It says: Distributors that

229:21 communicated with DEA field offices about

229:22 their roles and responsibilities under the

229:23 Controlled Substances Act were particularly

229:24 satisfied. We estimate that 92% of the

229:25 distributors found the field office staff

230:1 very or moderately helpful.

230:2 Did I read that correct?

230:3 A. You did.

230:4 Q. And, sir, in looking through

230:5 your communications with Congress, with the

230:6 media, with the Senate, you folks site this

230:7 study on multiple occasions. You even mailed

230:8 it to reporters.

230:9 Do you recall that?

230:10 A. Not in particular I don't, but

230:11 I don't.

230:12 Q. Let me see. When you quote

230:13 this study, you never mention the fact that

230:14 92% of the distributors that communicated

230:15 with the DEA were, quote, moderately to

230:16 very -- found them to be moderately to very

230:17 helpful. You never quote that statistic in

230:18 the public relations campaign that the DEA

230:19 was not providing guidance. You never cite

230:20 that.

230:21 And do you know why?

230:24 - 231:16 **Gray, John 07-30-2020 (00:00:50)**

JG02.217

230:24 A. No, I don't know what you're

230:25 saying is absolutely true or not. So I

231:1 don't -- wouldn't know why.

231:2 BY MR. KENNEDY:

231:3 Q. Sir, do you know this study

231:4 also found that 26 distributors said that

231:5 they talked to the DEA at least once a month?

231:6 Do you recall that?

231:7 A. No. Not surprised. Possible.

Page/Line	Source	ID
	231:8 Q. Now, in fairness, you folks 231:9 cite this study because the GAO does conclude 231:10 that the DEA could communicate better with 231:11 the distributors. In all fairness, they did 231:12 find that and you folks cite that constantly. 231:13 That was the finding that you 231:14 folks cite, the GAO conclusion that the DEA 231:15 could have communicated better with 231:16 distributors. Remember that?	
231:19 - 231:19	Gray, John 07-30-2020 (00:00:01)	JG02.218
	231:19 A. I've heard generally.	
231:22 - 232:11	Gray, John 07-30-2020 (00:00:37)	JG02.219
	231:22 Q. Sir, though, can we agree, 231:23 though -- can we agree that the question 231:24 isn't whether the DEA could have communicated 231:25 better. Isn't the real question, isn't the 232:1 real question whether or not the DEA failed 232:2 to communicate something that caused the 232:3 distributors to ship opioids that they 232:4 shouldn't have shipped? 232:5 I mean, that's the real 232:6 question; not whether they could communicate 232:7 better, but did they fail to communicate 232:8 something that caused the distributors to 232:9 ship something they shouldn't have been 232:10 shipping. That's the real question, isn't 232:11 it?	
232:17 - 232:19	Gray, John 07-30-2020 (00:00:02)	JG02.220
	232:17 Q. Do you agree, sir, that's the 232:18 real question?	
	232:19 A. No, I don't.	
232:23 - 233:5	Gray, John 07-30-2020 (00:00:25)	JG02.221
	232:23 Q. Let's look at that question. 232:24 Let's look at McKesson. Look at Exhibit 4 232:25 again. Exhibit 4 is the congressional study 233:1 report from -- 233:2 A. Oh, 4. 233:3 Q. -- 2018. We've looked at it 233:4 before. 233:5 A. Yep. Yep.	

Page/Line	Source	ID
233:14 - 234:6	<p>Gray, John 07-30-2020 (00:01:06)</p> <p>233:14 Q. Okay. Go to 417, if you would.</p> <p>233:15 Do you see the finding on 417?</p> <p>233:16 A. Yes, yep.</p> <p>233:17 Q. Congressional Finding: At</p> <p>233:18 various times during a ten-year period,</p> <p>233:19 McKesson shipped more than 8.29 million doses</p> <p>233:20 of opioids to two commonly owned pharmacies,</p> <p>233:21 located just three miles apart in rural</p> <p>233:22 West Virginia.</p> <p>233:23 And my question to you -- and</p> <p>233:24 you understand, these -- my question to you</p> <p>233:25 is: What did the DEA fail to tell</p> <p>234:1 McKesson -- what did they fail to communicate</p> <p>234:2 to McKesson that caused McKesson to believe</p> <p>234:3 that shipping millions of pills to two</p> <p>234:4 pharmacies three miles apart was okay? What</p> <p>234:5 did they fail to communicate that led them to</p> <p>234:6 believe that this was okay?</p>	JG02.222
234:11 - 235:7	<p>Gray, John 07-30-2020 (00:01:04)</p> <p>234:11 A. Well, again, as stated earlier,</p> <p>234:12 that's a question for McKesson, not for the</p> <p>234:13 trade organization. We don't have insight</p> <p>234:14 into any of their processes or any members'</p> <p>234:15 processes to what they do, how they do it and</p> <p>234:16 why they do it. So to look at this and offer</p> <p>234:17 an opinion is inappropriate.</p> <p>234:18 BY MR. KENNEDY:</p> <p>234:19 Q. Well, sir, but again, maybe</p> <p>234:20 that's right, but all of your marketing</p> <p>234:21 materials -- all your marketing materials and</p> <p>234:22 your PR materials and your testimony to</p> <p>234:23 Congress is saying that the DEA isn't giving</p> <p>234:24 some sort of information to folks like</p> <p>234:25 McKesson that's causing them to ship all of</p> <p>235:1 these pills.</p> <p>235:2 And so my question is: What --</p> <p>235:3 what did the DEA fail to tell McKesson that</p> <p>235:4 led them to believe that it's okay to send</p> <p>235:5 8.3 million doses of opioids to two</p>	JG02.223

Page/Line	Source	ID
235:10 - 237:19	<p>235:6 pharmacies that are just three miles apart?</p> <p>235:7 What did the DEA fail to tell them?</p> <p>Gray, John 07-30-2020 (00:02:40)</p> <p>235:10 A. Yeah, the DEA -- who knows, but</p> <p>235:11 that's a question for -- that the McKesson</p> <p>235:12 folks should answer, should they so choose</p> <p>235:13 to, but it's not something a trade</p> <p>235:14 organization can answer.</p> <p>235:15 BY MR. KENNEDY:</p> <p>235:16 Q. Look at 16. Look at</p> <p>235:17 Exhibit 16.</p> <p>235:18 (Whereupon, Deposition Exhibit</p> <p>235:19 Gray-16, 12/5/07 DEA Order to Show</p> <p>235:20 Cause to Cardinal,</p> <p>235:21 CAH_MDL2804_02466022 -</p> <p>235:22 CAH_MDL2804_02466025, was marked for</p> <p>235:23 identification.)</p> <p>235:24 A. Okay. Okay.</p> <p>235:25 ///</p> <p>236:1 BY MR. KENNEDY:</p> <p>236:2 Q. And again, we're trying to</p> <p>236:3 figure out what the DEA failed to tell these</p> <p>236:4 distributors that led them to ship what they</p> <p>236:5 shipped.</p> <p>236:6 So look at this from Cardinal.</p> <p>236:7 This is an order to show cause and immediate</p> <p>236:8 suspension of registration sent to Cardinal</p> <p>236:9 in '07, correct?</p> <p>236:10 A. That's what -- yes, that's what</p> <p>236:11 the document says.</p> <p>236:12 Q. Go to page 24, if you would.</p> <p>236:13 A. Got it.</p> <p>236:14 Q. Are you on 24? And I'm looking</p> <p>236:15 at the third paragraph, (d).</p> <p>236:16 A. (d), yeah.</p> <p>236:17 Q. It says on (d) -- and this is</p> <p>236:18 with respect to Cardinal, and this is the DEA</p> <p>236:19 and their order with respect to Cardinal,</p> <p>236:20 says: On September 1, 2006, Eric Brantley,</p> <p>236:21 manager of quality and regulatory affairs for</p>	JG02.224

Page/Line	Source	ID
236:22	the respondent -- that's Cardinal -- sent an	
236:23	e-mail to the DEA's e-commerce section	
236:24	stating that the respondent, Cardinal, had	
236:25	discontinued its sales of controlled	
237:1	substances to 13 suspected Internet	
237:2	pharmacies. Included in respondent's,	
237:3	Cardinal's, report, of discontinued accounts	
237:4	was the aforementioned RKR Holdings, Inc. On	
237:5	that same date, respondent, Cardinal,	
237:6	distributed 200 dosage units of combination	
237:7	hydrocodone products to RKR. From	
237:8	September 1, 2006 to January 31, 2007,	
237:9	respondent, Cardinal, distributed 393,600	
237:10	dosage units of combination hydrocodone	
237:11	products to RKR.	
237:12	And I suppose my question is	
237:13	the same: What did the DEA fail to	
237:14	communicate to Cardinal that led them to	
237:15	believe that it was okay to ship almost	
237:16	400,000 dosages of opioids to a pharmacy that	
237:17	Cardinal told the DEA they weren't going to	
237:18	ship to them anymore? I mean, where's the	
237:19	failure of the DEA to communicate?	
237:22 - 238:10	Gray, John 07-30-2020 (00:00:31)	JG02.225
237:22	A. And my answer is the same as it	
237:23	was with McKesson, I can't get in Eric	
237:24	Brantley's head. I don't know Eric Brantley.	
237:25	I don't know the context of what he reported,	
238:1	and -- or all this reference to discontinued	
238:2	accounts, et cetera. That is not in the	
238:3	purview of the Healthcare Distribution	
238:4	Association.	
238:5	BY MR. KENNEDY:	
238:6	Q. Let's look at AmerisourceBergen	
238:7	and see what maybe the DEA failed to	
238:8	communicate them -- to them that led to their	
238:9	shipment of opioids. Go back to Exhibit 4,	
238:10	if you would.	
239:22 - 240:18	Gray, John 07-30-2020 (00:01:06)	JG02.226
239:22	A. It's just page 160. Just use	

Page/Line	Source	ID
	<p>239:23 the report page. It's a lot easier. Here it</p> <p>239:24 is, hold on. There we go. Perfect. Got it.</p> <p>239:25 Q. Let's look at the congressional</p> <p>240:1 finding. AmerisourceBergen's due diligence</p> <p>240:2 documents for Westside Pharmacy included a</p> <p>240:3 list of six pain doctors. Two of the doctors</p> <p>240:4 were located a four-hour and an</p> <p>240:5 11-and-a-half-hour-round-trip drive from the</p> <p>240:6 pharmacy respectively. Five of the six</p> <p>240:7 doctors have either been subsequently</p> <p>240:8 convicted of or indicted on criminal charges</p> <p>240:9 related to their controlled substance</p> <p>240:10 prescribing, or are currently under federal</p> <p>240:11 investigation.</p> <p>240:12 My question is: Do you think</p> <p>240:13 that the DEA needed to tell AmerisourceBergen</p> <p>240:14 that there was something suspicious about a</p> <p>240:15 pharmacy filling prescriptions from a doctor</p> <p>240:16 whose office was an 11-and-a-half-hour trip</p> <p>240:17 from the pharmacy? Do you think they needed</p> <p>240:18 to tell them that?</p>	
240:21 - 240:25	Gray, John 07-30-2020 (00:00:13)	JG02.227
	<p>240:21 A. And again, yeah, I can't get</p> <p>240:22 into the head of the companies or the DEA or</p> <p>240:23 these pharmacies or -- so the circumstances</p> <p>240:24 around this were not something we would have</p> <p>240:25 information on or...</p>	
241:20 - 241:23	Gray, John 07-30-2020 (00:00:09)	JG02.228
	<p>241:20 Q. Mr. Gray, I don't have paper</p> <p>241:21 exhibits for my Exhibit 78, but I just want</p> <p>241:22 to do some quick housekeeping. Can we pull</p> <p>241:23 up Exhibit 78 on the screen, please.</p>	
242:6 - 243:3	Gray, John 07-30-2020 (00:00:54)	JG02.229
	<p>242:6 Q. This is an October 27, 2010</p> <p>242:7 letter to CVS Caremark.</p> <p>242:8 Do you see that?</p> <p>242:9 A. Right.</p> <p>242:10 Q. And look at the second page.</p> <p>242:11 A. Yeah.</p> <p>242:12 Q. And the third-to-last</p>	

Page/Line	Source	ID
	242:13 paragraph?	
	242:14 A. Yeah.	
	242:15 Q. You see where it says: For	
	242:16 your reference, I've included materials that	
	242:17 address Allied member dues for 2011.	
	242:18 Do you see that?	
	242:19 A. Correct. Yeah, I see it.	
	242:20 Q. And you enclosed dues to CVS.	
	242:21 CVS was a member of the HDA, were they not?	
	242:22 A. Yeah, evidently. I -- I	
	242:23 actually forgot that. That must have been --	
	242:24 I don't know if it was more than a year and	
	242:25 then they dropped out. I don't know what --	
	243:1 I can't recall the length of their stay.	
	243:2 Q. All right. Now, here's another	
	243:3 letter in 2012, Exhibit 79.	
243:4 - 243:8	Gray, John 07-30-2020 (00:00:01)	JG02.230
	243:4 (Whereupon, Deposition Exhibit	
	243:5 Gray-79, 11/14/12 HDMA Letter to	
	243:6 CVS Caremark, CVS-MDLT1-000099569 -	
	243:7 CVS-MDLT1-000099570, was marked for	
	243:8 identification.)	
243:10 - 246:23	Gray, John 07-30-2020 (00:03:38)	JG02.231
	243:10 Q. And that's, again, to	
	243:11 CVS Caremark.	
	243:12 Do you see that?	
	243:13 A. Oh, yeah. Yep.	
	243:14 Q. And if you look at the second	
	243:15 page, again, you enclose their 2013 dues	
	243:16 invoice.	
	243:17 Do you see that?	
	243:18 A. Yeah. Yeah.	
	243:19 Q. So we know they were at least	
	243:20 members from 2010 to 2013, true?	
	243:21 A. So it appears.	
	243:22 Q. Yeah. And possibly longer; we	
	243:23 would have to look?	
	243:24 A. Yeah. I really don't know.	
	243:25 They -- yeah. Can't recall.	
	244:1 Q. All right. Let's go back to	

Page/Line

Source

ID

244:2 what we were talking about. We were talking
244:3 about the public relations message that the
244:4 DEA was not providing the information that
244:5 distributors needed to do their job, and in
244:6 specific, I want to talk about the ARCOS
244:7 data, all right?

244:8 A. Okay.

244:9 Q. The DEA maintained a database
244:10 called the ARCOS database, correct?

244:11 A. Correct.

244:12 Q. And that was a compilation of
244:13 data that the distributors would provide to
244:14 them with respect to what they were
244:15 distributing to pharmacies across the
244:16 country, true?

244:17 A. That was the theory behind it.
244:18 I never actually saw it, but yes, that was --
244:19 I think that was the intent.

244:20 Q. And the distributors did not
244:21 have access to the ARCOS database; is that
244:22 true?

244:23 A. That's true.

244:24 Q. You folks at the HDMA requested
244:25 it, but it was never provided by the DEA,
245:1 true?

245:2 A. Not until President Trump
245:3 signed a law where they gave out partial
245:4 information a year and a half ago.

245:5 Q. Now, this refusal of the DEA to
245:6 provide you with the ARCOS database, that was
245:7 something that was utilized in the public
245:8 relations program very consistently, was it
245:9 not?

245:10 A. I seem to recall that.

245:11 Q. And you folks told Congress,
245:12 you told the Senate, you told the media,
245:13 legislatures, that because you didn't get the
245:14 ARCOS database, because the distributors did
245:15 not have the ARCOS database, they could never
245:16 see the full picture of exactly what a

Page/Line

Source

ID

245:17 pharmacy was purchasing from distributors,
245:18 true?

245:19 A. That's what was explained to me
245:20 and to the organization.

245:21 Q. And the point being that the
245:22 distributor can only see what they are
245:23 distributing to a pharmacy, but they are
245:24 unable to see if that pharmacy is actually
245:25 purchasing from other folks, true?

246:1 A. Right.

246:2 Q. That was the complaint -- that
246:3 was the PR message, true?

246:4 A. I can't comment on that. It
246:5 was in the PR message. Whether it was all
246:6 the time, I don't know.

246:7 Q. Well, it was in your testimony
246:8 to Congress in 2012, '14 and '17?

246:9 A. Sure.

246:10 Q. And again, the basic complaint
246:11 of the HDMA was that without the ARCOS data,
246:12 a distributor only knows what they are
246:13 selling to a pharmacy; that's the basic
246:14 complaint?

246:15 A. Um...

246:16 Q. My question is: Isn't it
246:17 really, though, a fact that when the DEA
246:18 would bring enforcement actions against any
246:19 one of the Big Three distributors, the ARCOS
246:20 data and the full picture of what a pharmacy
246:21 was actually buying, that was usually
246:22 irrelevant, wasn't it? The full picture was
246:23 irrelevant.

247:1 - 247:2 **Gray, John 07-30-2020 (00:00:02)**

JG02.232

247:1 A. I've never been in one of those
247:2 investigations --

247:8 - 247:19 **Gray, John 07-30-2020 (00:00:26)**

JG02.233

247:8 Q. Well, sir -- go ahead.

247:9 A. No, I -- I've never been

247:10 involved in those investigations. I don't
247:11 know.

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
247:12	Q. Well, let me ask you a	
247:13	different way.	
247:14	This excuse that a distributor	
247:15	didn't know if a pharmacy was purchasing	
247:16	opioids from another distributor, that's in	
247:17	your PR message. That's really just an	
247:18	attempt to distract away from the real	
247:19	issues, isn't it?	
247:23 - 247:24	Gray, John 07-30-2020 (00:00:02)	JG02.234
247:23	Q. That's really all that ever	
247:24	was?	
248:2 - 248:2	Gray, John 07-30-2020 (00:00:00)	JG02.235
248:2	A. No, I disagree.	
248:3 - 248:5	Gray, John 07-30-2020 (00:00:04)	JG02.236
248:3	BY MR. KENNEDY:	
248:4	Q. Let's look at Exhibit 3. Look	
248:5	at Exhibit 3, if you would.	
248:6 - 248:9	Gray, John 07-30-2020 (00:00:00)	JG02.237
248:6	(Whereupon, Deposition Exhibit	
248:7	Gray-3, E-mail(s), HDA_MDL_000087707 -	
248:8	HDA_MDL_000087710, was marked for	
248:9	identification.)	
248:12 - 250:4	Gray, John 07-30-2020 (00:02:04)	JG02.238
248:12	Q. This is an e-mail from you in	
248:13	2012 to John Parker. He's also an employee	
248:14	at the HDA, true?	
248:15	A. Correct.	
248:16	Q. And the subject is Wall Street	
248:17	Journal story, true?	
248:18	A. Let's see. Does it -- yeah,	
248:19	WSJ, yep.	
248:20	Q. Well, let's start at -- I'm	
248:21	sorry. From a chronological order, start at	
248:22	the bottom e-mail first. That's what happens	
248:23	first.	
248:24	A. Yeah, that's the --	
248:25	Q. Okay. So you have John Parker	
249:1	sending an e-mail to you and he's talking	
249:2	about the Wall Street Journal story, and he	
249:3	says -- he says: Below -- and he's saying	

Page/Line	Source	ID
249:4	this to you: Below is the Wall Street	
249:5	Journal story. They did not use our	
249:6	statement. ABC declined to comment and	
249:7	McKesson is quoted, along the lines of our	
249:8	statement. True or not, DEA's data grab your	
249:9	attention, quote, shipped enough oxycodone to	
249:10	Sanford to give 59 of the pills to every man,	
249:11	woman and child. It is interesting to see	
249:12	how the executive committee reacts.	
249:13	And then you respond to him in	
249:14	the e-mail above, you respond by saying: Not	
249:15	a real balanced story. Surprising bias in	
249:16	favor of DEA.	
249:17	A. Uh-huh.	
249:18	Q. Clearly most of this content	
249:19	came from DEA and not Cardinal. What he	
249:20	misses -- and you're talking about the	
249:21	reporter -- what he misses, even assuming his	
249:22	numbers are accurate, is that Cardinal knows	
249:23	what they deliver but have no idea what other	
249:24	distributors are selling into the pharmacy.	
249:25	So the doses go way up beyond Cardinal	
250:1	deliveries.	
250:2	Sir, and with all due respect,	
250:3	it wasn't what the reporter was missing.	
250:4	Sir, it's what you were missing, right?	
250:8 - 250:13	Gray, John 07-30-2020 (00:00:22)	JG02.239
250:8	Q. It's not what the reporter is	
250:9	missing; it's what you were missing. Because	
250:10	if -- if Cardinal knows that they're shipping	
250:11	enough opioids so that every man, woman and	
250:12	child is going to get 59 pills, what more	
250:13	does Cardinal need to know, right?	
250:16 - 251:6	Gray, John 07-30-2020 (00:00:35)	JG02.240
250:16	A. Wrong.	
250:17	BY MR. KENNEDY:	
250:18	Q. It's what you were missing.	
250:19	A. I don't know where the reporter	
250:20	got this data. He doesn't cite any	
250:21	particular source of information, and my	

Page/Line	Source	ID
	250:22 statement above reflects what we understood 250:23 to be the nature of the difficulty. 250:24 That's -- that's all I can say about this. 250:25 It's -- it is what it is. 251:1 BY MR. KENNEDY: 251:2 Q. Sir, this is real simple: If 251:3 Cardinal knows they are shipping enough 251:4 opioids to give 59 pills to every man, woman 251:5 and child, isn't that all by itself bad 251:6 enough, right?	
251:16 - 252:3	Gray, John 07-30-2020 (00:00:30) 251:16 A. I'm not prepared to say what 251:17 Cardinal knows or doesn't know. That's up to 251:18 Cardinal. So they may disagree with this 251:19 statement, and -- and that's the way it is. 251:20 Again, the reporter does not cite how or why 251:21 they came to this conclusion. 251:22 BY MR. KENNEDY: 251:23 Q. Well, can we agree that if 251:24 Cardinal is shipping enough to give 59 pills 251:25 to every man, woman and child, that the whole 252:1 picture of what others might be distributing 252:2 can only be worse, right? It can only be 252:3 worse.	JG02.241
252:7 - 252:8	Gray, John 07-30-2020 (00:00:02) 252:7 Q. Do you agree with that, it can 252:8 only --	JG02.242
252:11 - 252:11	Gray, John 07-30-2020 (00:00:00) 252:11 A. No.	JG02.243
252:13 - 252:19	Gray, John 07-30-2020 (00:00:18) 252:13 Q. Look at Exhibit 4 again, if you 252:14 would. We'll go by the big numbering that 252:15 Congress put on it, all right? 252:16 A. All right. 252:17 Q. This is the congressional 252:18 report. Go to their numbering 125. 252:19 A. 125, gotcha.	JG02.244
252:23 - 253:21	Gray, John 07-30-2020 (00:01:17) 252:23 Q. All right. Now, go to the 252:24 second paragraph that starts with McKesson.	JG02.245

252:25 A. Uh-huh.

253:1 Q. It says: McKesson began its
253:2 business relationship with Sav-Rite Pharmacy
253:3 hereinafter Sav-Rite No. 1, in February of
253:4 2006, at the latest. Sav-Rite No. 1 was
253:5 located in Kermit, West Virginia, which had a
253:6 population of 406 in the 2010 census.
253:7 According to data provided by McKesson and as
253:8 illustrated in the chart below, between
253:9 February 2006 and November 2007, McKesson
253:10 supplied Sav-Rite No. 1 with more than
253:11 5.66 million doses of hydrocodone and
253:12 oxycodone.

253:13 Do you see that?

253:14 A. Yeah.

253:15 Q. And my question is this: Can
253:16 we agree that if McKesson knows that they are
253:17 shipping 5.6 million pills to a single
253:18 pharmacy, then -- then for them to conclude
253:19 that something might be suspicious here, they
253:20 don't need to know what anybody else is
253:21 shipping to that pharmacy, true?

253:25 - 254:17

Gray, John 07-30-2020 (00:00:38)

JG02.246

253:25 Q. Can we agree with that?

254:1 A. No, not true. Again, I can't
254:2 get into the head of McKesson. It's not my
254:3 place. And McKesson knows what McKesson
254:4 knows, and that's a question, you know, to
254:5 take up at a later date with other parties.

254:6 Q. Well, sir, you keep saying if

254:7 McKesson knows. But --

254:8 A. I don't know what McKesson
254:9 doesn't know and knows. I'm not part and
254:10 parcel to their internal operations.

254:11 Q. Well, you would agree with me
254:12 that McKesson certainly has a responsibility
254:13 to know and understand what they shipped to a
254:14 pharmacy, right?

254:15 A. Look, I'm not making any
254:16 judgments on what McKesson does or doesn't

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
254:21 - 255:4	<p>254:17 do. That's for McKesson's decisions.</p> <p>Gray, John 07-30-2020 (00:00:24)</p> <p>254:21 Q. Well, let's -- let me go back</p> <p>254:22 then. But you can't make any judgments about</p> <p>254:23 McKesson, but the HDA is the one that is</p> <p>254:24 sending out all of the public relations</p> <p>254:25 messages saying that the distributors can't</p> <p>255:1 do their jobs in preventing diversion because</p> <p>255:2 they don't have the ARCOS data. You're the</p> <p>255:3 one saying that, correct?</p> <p>255:4 A. Correct.</p>	JG02.247
255:8 - 255:22	<p>Gray, John 07-30-2020 (00:00:43)</p> <p>255:8 Q. As late as 2017, in</p> <p>255:9 a letter to Congress, you tell Congress that</p> <p>255:10 distributors do not know --</p> <p>255:11 A. Where are we?</p> <p>255:12 Q. I'll pull an exhibit up.</p> <p>255:13 A. Okay.</p> <p>255:14 Q. You told Congress -- HDA</p> <p>255:15 Congress -- told Congress as late as -- as</p> <p>255:16 late as 2017 that the distributors do not</p> <p>255:17 know whether a pharmacy is purchasing from</p> <p>255:18 other distributors.</p> <p>255:19 Do you remember telling</p> <p>255:20 Congress that?</p> <p>255:21 A. Not specifically, but...</p> <p>255:22 Q. Look at Exhibit 5.</p>	JG02.248
255:23 - 256:2	<p>Gray, John 07-30-2020 (00:00:00)</p> <p>255:23 (Whereupon, Deposition Exhibit</p> <p>255:24 Gray-5, 11/28/17 HDA Letter to</p> <p>255:25 McCaskill, HDA_MDL_000000129 -</p> <p>256:1 HDA_MDL_000000132, was marked for</p> <p>256:2 identification.)</p>	JG02.249
256:4 - 256:5	<p>Gray, John 07-30-2020 (00:00:06)</p> <p>256:4 Q. Okay. Do you have that?</p> <p>256:5 A. Yep, I do right here.</p>	JG02.250
256:6 - 257:5	<p>Gray, John 07-30-2020 (00:00:54)</p> <p>256:6 Q. Look to the very next page --</p> <p>256:7 and again, this is your letter to Congress --</p> <p>256:8 A. Uh-huh. Uh-huh.</p>	JG02.307

Page/Line	Source	ID
256:9	Q. -- specifically to the Senate	
256:10	in 2017. Look at the next page, one, two,	
256:11	three, the fourth paragraph down,	
256:12	three-quarters of the way down starts with	
256:13	"Distributors are only aware of."	
256:14	A. Wait a minute.	
256:15	Q. You can -- maybe if you look up	
256:16	on the screen it will be easier.	
256:17	A. Oh, 2. Oh, you're on page 2.	
256:18	Gotcha. Okay.	
256:19	Q. You write to Congress -- do you	
256:20	write to Congress: Distributors are only	
256:21	aware of the amount that their company has	
256:22	shipped?	
256:23	Do you see that? Is that what	
256:24	you state?	
256:25	A. Yeah, that's correct.	
257:1	Q. You say: Only the DEA has the	
257:2	complete picture. Correct?	
257:3	A. That's correct.	
257:4	Q. And when you told Congress	
257:5	that, sir, that was simply not true.	
257:9 - 257:9	Gray, John 07-30-2020 (00:00:00)	JG02.251
257:9	Q. Right?	
257:13 - 257:13	Gray, John 07-30-2020 (00:00:01)	JG02.252
257:13	Q. That was not true?	
257:16 - 257:20	Gray, John 07-30-2020 (00:00:10)	JG02.253
257:16	A. No, we did not know that to be	
257:17	not true.	
257:18	BY MR. KENNEDY:	
257:19	Q. Your talking points, look at	
257:20	Exhibit 29.	
257:21 - 257:25	Gray, John 07-30-2020 (00:00:02)	JG02.254
257:21	(Whereupon, Deposition Exhibit	
257:22	Gray-29, 10/17/16 HDA Talking Points	
257:23	on Resources on Prescription Drug	
257:24	Abuse, HDA_MDL_000032191 -	
257:25	HDA_MDL_000032203, was marked for	
258:2 - 258:15	Gray, John 07-30-2020 (00:00:36)	JG02.255
258:2	A. Uh-huh. Yep. Got it.	

Page/Line	Source	ID
	258:3 BY MR. KENNEDY:	
	258:4 Q. Go to page 93 of your talking	
	258:5 points --	
	258:6 A. Okay.	
	258:7 Q. -- under General Prescription	
	258:8 Abuse, bullet point down, number five.	
	258:9 A. Yep.	
	258:10 Q. Does it state: Each	
	258:11 distributor is only aware of the product it	
	258:12 ships? Is that what it says?	
	258:13 A. Right.	
	258:14 Q. That talking point was untrue,	
	258:15 was it not?	
258:18 - 259:2	Gray, John 07-30-2020 (00:00:23)	JG02.256
	258:18 A. From HDA's perspective, that	
	258:19 talking point was what we understood to be	
	258:20 the situation in the marketplace.	
	258:21 BY MR. KENNEDY:	
	258:22 Q. And, sir, the HDA even	
	258:23 represented to the Supreme Court of	
	258:24 West Virginia that the pharmacies did not	
	258:25 know what other distributors were shipping,	
	259:1 that only the DEA knew. Let's look at	
	259:2 Exhibit 30.	
259:3 - 259:7	Gray, John 07-30-2020 (00:00:00)	JG02.257
	259:3 (Whereupon, Deposition Exhibit	
	259:4 Gray-30, HDMA Amerisource Bergen	
	259:5 Amicus Brief, HDA_MDL_000081296 -	
	259:6 HDA_MDL_000081319, was marked for	
	259:7 identification.)	
259:8 - 260:22	Gray, John 07-30-2020 (00:01:37)	JG02.258
	259:8 A. Yep.	
	259:9 BY MR. KENNEDY:	
	259:10 Q. Do you see that, State of	
	259:11 West Virginia, Supreme Court of Appeals?	
	259:12 A. Yep. Yes. Yes.	
	259:13 Q. Halfway down it says: Amicus	
	259:14 Curiae Brief of Healthcare Distribution	
	259:15 Management Association, right?	
	259:16 A. And the Wholesale Distributors	

Page/Line	Source	ID
259:17	Association, correct.	
259:18	Q. All right. Go to page 000 --	
259:19	or just 06.	
259:20	A. 06. Okay.	
259:21	Q. Up at the top, first couple of	
259:22	sentences, again, very strongly you make the	
259:23	representation on behalf of the HDA: An	
259:24	individual wholesale distributor has no	
259:25	visibility at all --	
260:1	A. Uh-huh.	
260:2	Q. -- into what other entities its	
260:3	customer may be purchasing from and how much	
260:4	product the customer is purchasing.	
260:5	That's your statement to the	
260:6	Supreme Court of West Virginia on behalf of	
260:7	the HDA, true?	
260:8	A. True.	
260:9	Q. You next state: A single	
260:10	distributor has no way of knowing if it's a	
260:11	pharmacy's sole supplier of controlled	
260:12	prescription drugs or if that pharmacy is	
260:13	purchasing controlled prescription drugs from	
260:14	any number of other wholesale distributors.	
260:15	And that was your statement,	
260:16	sir, true?	
260:17	A. Well, that's what the -- that's	
260:18	what it says.	
260:19	Q. And that statement is untrue,	
260:20	just like the statement that you gave to	
260:21	Congress, just like the statement in your	
260:22	talking points. It's simply not true.	
260:25 - 260:25	Gray, John 07-30-2020 (00:00:01)	JG02.259
260:25	Q. Can we agree?	
261:3 - 261:20	Gray, John 07-30-2020 (00:00:49)	JG02.260
261:3	A. No, we don't agree, because	
261:4	that's what we believed to be the case.	
261:5	BY MR. KENNEDY:	
261:6	Q. Well, believing something and	
261:7	having it be true sometimes are different	
261:8	concepts, right? Correct?	

Page/Line	Source	ID
	261:9 A. You know, I'm not playing moral	
	261:10 equivalency games and games like that. No, I	
	261:11 have no comment on that.	
	261:12 Q. Go to Exhibit 4. Exhibit 4 --	
	261:13 again, this is the report from Congress in	
	261:14 2018.	
	261:15 A. Right. Exhibit 4. Jesus, I	
	261:16 keep thinking that's in a separate book.	
	261:17 Okay. 2018.	
	261:18 Q. Go to page 112 of Congress'	
	261:19 numbering system.	
	261:20 A. All right. Hold on.	
262:1 - 262:8	Gray, John 07-30-2020 (00:00:18)	JG02.261
	262:1 A. Yep.	
	262:2 Q. Congressional Finding:	
	262:3 Distributors can obtain dispensing data from	
	262:4 pharmacies that show the total -- the total	
	262:5 volume of controlled substances dispensed by	
	262:6 a pharmacy.	
	262:7 Do you see that?	
	262:8 A. I see it.	
262:20 - 262:20	Gray, John 07-30-2020 (00:00:02)	JG02.262
	262:20 Q. Simple math, Mr. Gray, correct?	
262:22 - 262:24	Gray, John 07-30-2020 (00:00:08)	JG02.263
	262:22 A. Wait a minute. Now I'm reading	
	262:23 the preliminary -- the preceding pages to	
	262:24 understand this.	
262:25 - 263:24	Gray, John 07-30-2020 (00:00:58)	JG02.289
	262:25 (Document review.)	
	263:1 A. Yeah, I'm not prepared to	
	263:2 comment on this conclusion in this report	
	263:3 because that -- it goes against what we as an	
	263:4 organization understood to be the situation,	
	263:5 and I'm not so sure -- you'd have to ask the	
	263:6 companies how useful the information is or	
	263:7 isn't.	
	263:8 BY MR. KENNEDY:	
	263:9 Q. Well, look at page -- look at	
	263:10 page 114, two pages later.	
	263:11 A. Uh-huh.	

Page/Line	Source	ID
	<p>263:12 Q. Two pages later, third</p> <p>263:13 paragraph down starting with</p> <p>263:14 "AmerisourceBergen."</p> <p>263:15 Do you see that?</p> <p>263:16 A. I see it.</p> <p>263:17 Q. AmerisourceBergen later told</p> <p>263:18 the committee, quote, ABDC collects patient</p> <p>263:19 deidentified dispensing reports on an</p> <p>263:20 as-needed basis to allow it to investigate</p> <p>263:21 and mitigate concerns about possible</p> <p>263:22 suspicious behavior by a customer.</p> <p>263:23 So AmerisourceBergen is</p> <p>263:24 collecting the dispensing data, correct?</p>	
264:2 - 264:23	<p>Gray, John 07-30-2020 (00:00:45)</p> <p>264:2 A. Yeah.</p> <p>264:3 BY MR. KENNEDY:</p> <p>264:4 Q. Is that correct?</p> <p>264:5 A. It just says -- I don't know</p> <p>264:6 whether that's correct or not, but that's</p> <p>264:7 what it says.</p> <p>264:8 Q. Go to page 248 -- excuse me,</p> <p>264:9 116, two pages later. Let's look at</p> <p>264:10 Cardinal, see whether they were collecting</p> <p>264:11 dispensing data that tells them the total</p> <p>264:12 volume that a pharmacy is dispensing and</p> <p>264:13 selling.</p> <p>264:14 The indented second paragraph</p> <p>264:15 states: As part of its comprehensive</p> <p>264:16 anti-diversion program, Cardinal Health</p> <p>264:17 periodically requests and receives aggregate</p> <p>264:18 dispensing data and the total number of</p> <p>264:19 prescriptions filled for both controlled and</p> <p>264:20 noncontrolled substances from prospective and</p> <p>264:21 existing pharmacy customers.</p> <p>264:22 So Cardinal was collecting it,</p> <p>264:23 right?</p>	JG02.264
265:5 - 265:7	<p>Gray, John 07-30-2020 (00:00:05)</p> <p>265:5 A. That's what it says.</p> <p>265:6 BY MR. KENNEDY:</p> <p>265:7 Q. Is that correct, sir?</p>	JG02.265

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
265:10 - 265:15	Gray, John 07-30-2020 (00:00:09) 265:10 A. I have no idea. It's just what 265:11 it says. 265:12 BY MR. KENNEDY: 265:13 Q. That's a congressional finding 265:14 based upon what Cardinal told Congress, true? 265:15 A. Okay.	JG02.266
265:19 - 266:2	Gray, John 07-30-2020 (00:00:27) 265:19 Q. Sir, my point being: The PR 265:20 program, the statements to Congress in 2012, 265:21 2014, 2017, to the media, to the 265:22 West Virginia Court that the distributors 265:23 somehow didn't have the whole picture, they 265:24 didn't know whether or not a pharmacy was 265:25 buying from another distributor, that simply 266:1 was not true based upon what we see in these 266:2 congressional findings. It wasn't true.	JG02.267
266:6 - 266:7	Gray, John 07-30-2020 (00:00:03) 266:6 Q. Isn't that true, sir, based 266:7 upon what we just looked at?	JG02.268
266:10 - 267:2	Gray, John 07-30-2020 (00:00:48) 266:10 A. No, I can't say whether it's 266:11 true or not because just months later, I 266:12 believe, from this, the President signed into 266:13 a law requiring DEA to disclose ARCOS data in 266:14 a limited form, and there was a great push by 266:15 others in the industry to get that done, and 266:16 so if this is -- this is as comprehensive as 266:17 you seem to suggest it wants to be, then you 266:18 have to question why they even bothered to 266:19 pass the legislation that the President 266:20 signed in August, I believe, of 2018 whereby 266:21 DEA would agree to release data in a -- sort 266:22 of a re-collected form without the names of 266:23 the distributor. 266:24 So I can only say on this, 266:25 there's obviously disagreements in the 267:1 industry as to what is and what isn't 267:2 available for information.	JG02.269
267:11 - 267:19	Gray, John 07-30-2020 (00:00:28)	JG02.270

Page/Line	Source	ID
	267:11 Q. Let's go a step further.	
	267:12 Not only did the Big Three know	
	267:13 that they were collecting dispensing data,	
	267:14 but you, you, John Gray, you also knew that	
	267:15 they were collecting dispensing data. You'd	
	267:16 known it since 2012, didn't you?	
	267:17 A. Nope, I did not.	
	267:18 Q. Look at Exhibit 74, if you	
	267:19 would, sir.	
267:20 - 267:23	Gray, John 07-30-2020 (00:00:05)	JG02.271
	267:20 (Whereupon, Deposition Exhibit	
	267:21 Gray-74, E-mail(s),	
	267:22 HDA_MDL_000215984 - HDA_MDL_000215986,	
	267:23 was marked for identification.)	
267:24 - 269:15	Gray, John 07-30-2020 (00:01:23)	JG02.272
	267:24 A. Sure. 74. All right.	
	267:25 ///	
	268:1 BY MR. KENNEDY:	
	268:2 Q. Start all the way at the	
	268:3 bottom. That's the first e-mail in time, all	
	268:4 the way at the bottom of the first page. You	
	268:5 see it says John Gray to David Moody --	
	268:6 A. Correct.	
	268:7 Q. -- all the way at the bottom.	
	268:8 This is your e-mail --	
	268:9 A. Uh-huh.	
	268:10 Q. -- that you're sending out to	
	268:11 the executive committee. Go to the next	
	268:12 page, and you can see that you're sending	
	268:13 this out to the executive committee.	
	268:14 A. Right. Right.	
	268:15 Q. And it's 3/4/2012.	
	268:16 Do you see that?	
	268:17 A. Uh-huh.	
	268:18 Q. And e-mailing -- you're	
	268:19 forwarding them the HDMA amicus brief for the	
	268:20 Cardinal case, correct?	
	268:21 A. Uh-huh. Yes.	
	268:22 Q. And I'm not going to read that	
	268:23 long e-mail, but you're asking them to review	

Page/Line	Source	ID
	268:24 the amicus brief. If you want to peruse	
	268:25 that, you're asking the executive committee	
	269:1 to review the amicus brief before it gets	
	269:2 filed with the Court.	
	269:3 Do you see that?	
	269:4 A. I see it.	
	269:5 Q. And at the bottom it says:	
	269:6 Please let me know as soon as possible	
	269:7 whether or not you support filing this brief.	
	269:8 Do you see that? Maybe -- it's	
	269:9 the final paragraph. You see that?	
	269:10 A. Yeah, got it.	
	269:11 Q. So you're asking the executive	
	269:12 committee to review the Cardinal amicus brief	
	269:13 that the HDA has paid to have written, and	
	269:14 you're saying take a look at it and see if	
	269:15 this is okay for us to file.	
269:20 - 269:20	Gray, John 07-30-2020 (00:00:01)	JG02.273
	269:20 Q. -- go back to the first page,	
269:21 - 272:17	Gray, John 07-30-2020 (00:02:38)	JG02.308
	269:21 go back -- go back to the first page now.	
	269:22 A. Right.	
	269:23 Q. And you'll see now the response	
	269:24 from Dale Smith of HD Smith, starts with --	
	269:25 it's March 5, 2012, Dale Smith is writing you	
	270:1 back.	
	270:2 A. Uh-huh.	
	270:3 Q. Because he's reviewed the	
	270:4 Cardinal amicus brief.	
	270:5 A. Uh-huh.	
	270:6 Q. And he's writing you back with	
	270:7 his comments, and so he states: John: As	
	270:8 you know, I believe HDMA should be a strong	
	270:9 voice for HDMA members with the DEA. The	
	270:10 brief details wholesalers' inability to gain	
	270:11 insight into the practitioner prescribing and	
	270:12 pharmacy dispensing practices due to HIPAA	
	270:13 issues.	
	270:14 A. Uh-huh.	
	270:15 Q. This -- this -- he's talking	

Page/Line

Source

ID

270:16 about your brief. This is not altogether
270:17 true.
270:18 A. Uh-huh.
270:19 Q. We have been using dispensing
270:20 information to assist us in making informed
270:21 decisions regarding our customers.
270:22 A. Correct.
270:23 Q. We have been able to obtain
270:24 this information without patient identifiable
270:25 information. When we have been unable to, we
271:1 do not access the information. We have also
271:2 been using a third party that signs a HIPAA
271:3 business agreement with the pharmacy,
271:4 extracts the information we need, and then
271:5 gives it to us without the patient
271:6 information.
271:7 And then he says: This does
271:8 not need to be included in the brief. So he
271:9 told you that they're getting dispensing data
271:10 here in 2012, right?
271:11 A. Uh-huh. Uh-huh. Yes, sir.
271:12 Q. He tells you that what you
271:13 wrote in the brief isn't altogether true,
271:14 correct?
271:15 A. Well, that's Dale's opinion.
271:16 Q. Right up top you say: Dale,
271:17 thank you for your insight.
271:18 Correct?
271:19 A. Correct.
271:20 Q. He tells you that part of this
271:21 brief isn't true because they're getting
271:22 dispensing data. He tells you not only is it
271:23 not true, it doesn't need to be in the brief.
271:24 And then when we look at the final brief, the
271:25 part that he said was untrue was never
272:1 removed, right? It was never removed, true?
272:2 And I've got Exhibit --
272:3 A. I have to go in -- I'd have to
272:4 go in and read the brief, but if it's in
272:5 there, it's in there. If it's not, then it's

Page/Line	Source	ID
	272:6 not.	
	272:7 MR. KENNEDY: Exhibit 72 and 73	
	272:8 are the draft and the final version,	
	272:9 if you folks ever want to review	
	272:10 those --	
	272:11 THE WITNESS: Okay.	
	272:12 MR. KENNEDY: -- and if you can	
	272:13 tell me that you somehow removed what	
	272:14 he told you wasn't true, I would stand	
	272:15 corrected, but we've read it quite a	
	272:16 few times.	
	272:17 THE WITNESS: Okay.	
272:18 - 273:2	Gray, John 07-30-2020 (00:00:26)	JG02.311
	272:18 BY MR. KENNEDY:	
	272:19 Q. Now, we're talking about --	
	272:20 still talking about this ARCOS data. You	
	272:21 folks continuously represented in the PR that	
	272:22 you weren't getting the ARCOS data, and you	
	272:23 would represent to Congress and to the media	
	272:24 and others that the ARCOS data was critical.	
	272:25 Do you recall that? That was	
	273:1 your word, ARCOS data is critical.	
	273:2 A. Okay.	
273:3 - 274:15	Gray, John 07-30-2020 (00:01:35)	JG02.310
	273:3 Q. In fact, as late as 2017, you	
	273:4 told Congress or the Senate that it was	
	273:5 critical. We'll go to Exhibit 5 again, if	
	273:6 you can pull that up.	
	273:7 A. Uh-huh. Where is it? Hold on.	
	273:8 Yeah. Here we are. Okay.	
	273:9 Q. This is your 2017 letter --	
	273:10 A. Uh-huh.	
	273:11 Q. -- to the Senate?	
	273:12 A. Uh-huh.	
	273:13 Q. Look at the second page, if you	
	273:14 would. Fourth paragraph down, three-quarters	
	273:15 of the way down the paragraph the sentence	
	273:16 starts with "Distributors."	
	273:17 A. Okay.	
	273:18 Q. And you state to the Senate:	

Page/Line	Source	ID
	<p>273:19 Distributors are only aware of the amount</p> <p>273:20 that their company has shipped. Only DEA,</p> <p>273:21 through its ARCOS database, has the complete</p> <p>273:22 picture of the totality of distributors</p> <p>273:23 serving an individual customer. To date,</p> <p>273:24 distributors still do not have access to this</p> <p>273:25 critical data.</p> <p>274:1 Is that what you told the</p> <p>274:2 Senate?</p> <p>274:3 A. It's right here, whatever you</p> <p>274:4 read.</p> <p>274:5 Q. And that was consistent with</p> <p>274:6 your message, that the ARCOS data was</p> <p>274:7 critical?</p> <p>274:8 A. Uh-huh.</p> <p>274:9 Q. And this is a 2017 letter?</p> <p>274:10 A. Correct.</p> <p>274:11 Q. And the truth is, sir, the HDA</p> <p>274:12 and the distributors didn't even know whether</p> <p>274:13 they wanted the ARCOS data, true? They</p> <p>274:14 didn't even know whether they wanted it.</p> <p>274:15 This was just public relations.</p>	
274:20 - 274:22	Gray, John 07-30-2020 (00:00:06)	JG02.274
	<p>274:20 Q. True?</p> <p>274:21 A. Not true. Not true.</p> <p>274:22 Q. Let's look at Exhibit 6.</p>	
275:2 - 275:15	Gray, John 07-30-2020 (00:00:25)	JG02.275
	<p>275:2 Q. This is an e-mail from Anita</p> <p>275:3 Ducca to Pat Kelly --</p> <p>275:4 A. Correct.</p> <p>275:5 Q. -- on June 21, 2016. This is</p> <p>275:6 almost a year before you tell Congress how</p> <p>275:7 critical ARCOS is.</p> <p>275:8 A. Uh-huh.</p> <p>275:9 Q. Anita Ducca, again, tell us her</p> <p>275:10 title.</p> <p>275:11 A. Vice president, regulatory</p> <p>275:12 affairs.</p> <p>275:13 Q. And she's been at the HDA for</p> <p>275:14 as long as you were there?</p>	

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
275:24 - 275:25	<p>275:15 A. Yes.</p> <p>Gray, John 07-30-2020 (00:00:01)</p> <p>275:24 Q. All right. She says, again: I</p> <p>275:25 found the cover letter and the meeting</p>	JG02.276
276:1 - 277:3	<p>Gray, John 07-30-2020 (00:01:15)</p> <p>276:1 summary that we sent to Michelle L. with the</p> <p>276:2 first set of questions to her in 2011.</p> <p>276:3 And then she states: Also, I</p> <p>276:4 don't know if you want to add this, given</p> <p>276:5 some of the sensitivities about whether or</p> <p>276:6 not we truly want ARCOS data shared after</p> <p>276:7 all.</p> <p>276:8 Again, she says about whether</p> <p>276:9 or not we truly want ARCOS data shared after</p> <p>276:10 all, parentheses.</p> <p>276:11 A. Uh-huh.</p> <p>276:12 Q. If we got it -- if we got it,</p> <p>276:13 what would we do with it, question mark?</p> <p>276:14 A. Uh-huh. Uh-huh.</p> <p>276:15 Q. That's what Anita Ducca wrote</p> <p>276:16 in 2016, right?</p> <p>276:17 A. Yeah.</p> <p>276:18 Q. This is a year before you told</p> <p>276:19 Congress how critical this was, true?</p> <p>276:20 A. Uh-huh. Well, yeah, presuming.</p> <p>276:21 I don't have it in front of me</p> <p>276:22 chronology-wise, probably, if it's '16-17,</p> <p>276:23 yeah. Yes.</p> <p>276:24 Q. Let me finish. Let me finish</p> <p>276:25 here and put what we talked about in some</p> <p>277:1 context, all right?</p> <p>277:2 Look at Exhibit 45, if you</p> <p>277:3 would.</p> <p>Gray, John 07-30-2020 (00:00:44)</p> <p>277:9 Q. Do you have that in front of</p> <p>277:10 you?</p> <p>277:11 A. I do.</p> <p>277:12 Q. This is a fact sheet created by</p> <p>277:13 the HDMA, true?</p> <p>277:14 A. I haven't seen this in years.</p>	JG02.277
277:9 - 278:3	<p>Gray, John 07-30-2020 (00:00:44)</p> <p>277:9 Q. Do you have that in front of</p> <p>277:10 you?</p> <p>277:11 A. I do.</p> <p>277:12 Q. This is a fact sheet created by</p> <p>277:13 the HDMA, true?</p> <p>277:14 A. I haven't seen this in years.</p>	JG02.278

Page/Line

Source

ID

277:15 I suspect that is true.

277:16 Q. Down at the bottom you see

277:17 healthcaredistributors.org, HDMA?

277:18 A. Uh-huh.

277:19 Q. 2013, do you see that?

277:20 A. Yeah. Well, wait a minute,

277:21 right, copyright 2013.

277:22 Q. So this would appear on your

277:23 website; is that right?

277:24 A. I'm not sure whether this was a

277:25 printed piece or something put on the web. I

278:1 don't know.

278:2 Q. Go to page point, point, point

278:3 59.

278:4 - 279:3

Gray, John 07-30-2020 (00:00:59)

JG02.312

278:4 A. Okay. Here we go. Yep, I have

278:5 it.

278:6 Q. This is your publication. This

278:7 says National Epidemic: Prescription Drug

278:8 Abuse.

278:9 Do you see that?

278:10 A. Uh-huh.

278:11 Q. And it says: The Centers for

278:12 Disease Control and Prevention reports that

278:13 one person dies every 19 minutes in the

278:14 United States --

278:15 A. Uh-huh.

278:16 Q. -- from prescription drug

278:17 abuse.

278:18 A. Uh-huh.

278:19 Q. This is 2013.

278:20 Do you see that?

278:21 A. Uh-huh.

278:22 Q. So for context purposes, when

278:23 the HDA decided to launch a PR program

278:24 instead of becoming more compliant with the

278:25 law, they knew that one American was dying

279:1 every 19 minutes from an overdose of a

279:2 prescription drug, right? They knew it at

279:3 that time.

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
279:6 - 279:6	Gray, John 07-30-2020 (00:00:00)	JG02.279
	279:6 A. I don't know --	
279:9 - 279:9	Gray, John 07-30-2020 (00:00:02)	JG02.280
	279:9 Q. Correct? They knew it?	
279:12 - 279:16	Gray, John 07-30-2020 (00:00:06)	JG02.281
	279:12 A. I -- you know, I don't know if	
	279:13 they knew it.	
	279:14 BY MR. KENNEDY:	
	279:15 Q. It's in their fact sheet, isn't	
	279:16 it?	
279:19 - 280:3	Gray, John 07-30-2020 (00:00:22)	JG02.282
	279:19 A. Sure, but that doesn't mean	
	279:20 they read it.	
	279:21 BY MR. KENNEDY:	
	279:22 Q. And when the HDA decided not to	
	279:23 fund the RAND study in 2013, the study that	
	279:24 was proposed to look for answers to save	
	279:25 lives, when they decided not to fund that	
	280:1 study in 2013, they knew that one American	
	280:2 was dying every 19 minutes from an overdose	
	280:3 of an opioid, correct?	
280:6 - 280:6	Gray, John 07-30-2020 (00:00:01)	JG02.283
	280:6 A. Yeah, that's not correct.	
280:7 - 280:16	Gray, John 07-30-2020 (00:00:25)	JG02.290
	280:7 Yeah, not correct.	
	280:8 BY MR. KENNEDY:	
	280:9 Q. Not correct?	
	280:10 And when the HDA decided not to	
	280:11 fund -- not to fund the partnership study	
	280:12 with the blue ribbon panel to look for	
	280:13 answers to abuse and addiction, when they	
	280:14 decided not to fund that study in 2013, they	
	280:15 knew one American was dying every 19 minutes,	
	280:16 correct?	
280:19 - 280:25	Gray, John 07-30-2020 (00:00:20)	JG02.284
	280:19 A. I don't -- yeah, I don't know.	
	280:20 BY MR. KENNEDY:	
	280:21 Q. And when the HDA decided to	
	280:22 disband -- to disband the West Virginia Task	
	280:23 Force and not do the summit to look for	

JG02-Gray, John - Plaintiffs' Submission

Page/Line	Source	ID
281:4 - 281:4	280:24 answers in West Virginia, they knew about 280:25 this statistic, correct -- Gray, John 07-30-2020 (00:00:01)	JG02.285
281:8 - 281:8	281:4 Q. -- every 19 minutes? Gray, John 07-30-2020 (00:00:01)	JG02.286
281:12 - 281:20	281:8 Q. They knew it -- Gray, John 07-30-2020 (00:00:29)	JG02.287
281:23 - 281:25	281:12 Q. -- is that correct? 281:13 A. That's not necessarily correct. 281:14 Q. And when the HDA opposed 281:15 legislation with respect to HCPs and taxes 281:16 and return programs in 2012 and 2013 and 2014 281:17 and 2015, they knew about the statistic, they 281:18 knew about the fact that in this country one 281:19 person was dying every 19 minutes from an 281:20 overdose of prescription drugs, true? Gray, John 07-30-2020 (00:00:06)	JG02.288
282:1 - 282:12	281:23 A. I can't speak for what they 281:24 knew. I can show you what we put out. 281:25 /// Gray, John 07-30-2020 (00:00:31) 282:1 BY MR. KENNEDY: 282:2 Q. Sir, let me ask you this: In 282:3 September of 2013, the HDA held meetings at 282:4 the Greenbriar in West Virginia? 282:5 A. Uh-huh. 282:6 Q. Do you know how many pills the 282:7 Big Three distributed in West Virginia while 282:8 you were at that meeting? Did you know it? 282:9 A. I can't recall whether I knew 282:10 or not. 282:11 MR. KENNEDY: I've got nothing 282:12 further. Thank you, Mr. Gray.	JG02.314

Plaintiffs Affirmative Designations = 03:30:34

Defense Completeness Counters = 00:03:47

Plaintiffs Counter Counters = 00:00:40

Total Time = 03:35:01